# *United States Court of Appeals*
# *for the Second Circuit*

# APPENDIX

# 77-2035
# 77-2135

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## United States Court of Appeals

### FOR THE SECOND CIRCUIT

**Docket No. 77-2035**
**77-2135**

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P of 3

UNITED STATES *ex rel.* LOUIS WOLFISH, *et al.*,
*Petitioners-Appellees,*

—v.—

HONORABLE EDWARD LEVI, *et al.*,
*Respondents-Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES COURT OF APPEALS
FILED
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## JOINT APPENDIX

### Volume III (Pages A-801 to A-1200)

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Q Your judgments as to the necessity, though, are not based on any particular psychiatric expertise, are they? It is really more a management problem than a psychiatric one, wouldn't you say?

A It is based upon knowledge of how much behavior can be managed by other means, which certainly has something to do with psychiatric training and experience.

Q You testified that in your opinion the current visiting schedule at the MCC is insufficient to meet the psychological needs of the inmates and that it therefore has a harmful effect.

Would the degree of intensity of that harmful effect depend upon the length of incarceration?

A To some degree.

Q Let us assume an individual is permitted three visits a week, and let us assume those visits last, just for the sake of my question, two hours, and let us also assume for this question that the individual spends a total of 30 days at the MCC. Is it your opinion, based on those facts, that individual would suffer significant psychological harmful consequences?

A And this is under the visiting conditions as they exist now?

Q Yes.

A I think it is possible, in 30 days.

Q Is there any direct evidence of such harmful consequences at the MCC?

A No, not specific.

Q When you visited the MCC in September of 1975 did you find the visiting room to be satisfactory from the point of view of affording adequate opportunity for visits?

A I think I've already answered that. I said that it certainly was much more conducive to a private kind of visit, but it certainly didn't allow the kind of privacy which I'm saying would be desirable.

Q Would you say it met your conception of what is minimally acceptable?

A Minimally acceptable? My position was and is that this is of such primary importance that it is the institution's obligation and responsibility to make such visiting open to a maximal degree. That's my position, whether it is 30 days or one day or a year or whatever.

Q So that in your view there is really no such thing as something being minimally acceptable. Your view is that the more, the better, and there is really no bottom limit that you are willing to set?

A In terms of visiting?

Q Or anything else.

A No, I don't think it applies to everything.

Q Well, let's just limit it to visiting, for the sake of this question.

A I would say the more the better, absolutely.

Q And that short of continual visits on the floor and in the rooms, there is nothing that would come up to your standard.

A Continual visiting? You mean 24 hours?

Q Well, let's say 12 hours, then. Of course, though, 18 hours would be better than 12 hours, I assume.

A Yes. So what is your question?

Q Let me ask you, what, in your view, would be adequate? H ow many hours a day? Where should the visiting take place?

A I think the visiting should take place in the units, that is, single-room units, not in the dormitory, and that they should be open for that purpose for, say, 12 hours a day, and that there should be the opportunity for the visit to occur in private, in the room, for some reasonable period of time.

I know that certain things are necessary to operate any institution. I'm not suggesting that it must be for 12 hours a day for any one visit, but that there be an adequate number of hours over the day or in the evening when most people are able to visit and that they could occur privately and that they could go on for several hours.

Q Have you ever visited an institution which had that visiting policy?

A None that had that general policy. I've been in institutions where family visits were possible and could occur in private and could occur for extended periods of time.

Q How many such institutions have you visited?

A Well, I can only speak of one about which I have first-hand knowledge and experience, and that was at Soledad, where houses on the grounds were made available to inmates and they could bring their families and have the house to themselves and their family for a weekend, for example.

Q Isn't that a very different situation, though, from bringing your loved one or your spouse onto the

A That is true. But I don't think the principle is any different. I think the men would appreciate the importance of that visit to their fellows and would not resent it, really. Again, they might feel their own lack acutely, but I don't think it would lead to resentment and anger or any particular problems from that point of view.

Q Are you aware of any studies similar to the Mississippi study at an institution like the MCC?

A No, I'm not. I think it would be a wonderful place to try it, though.

Q Are you aware of any institution set up by the MCC which permits such open family visiting right in the living unit as opposed to separate houses?

A No, I'm not.

Q Where, under your proposal, the visiting would take place in a fairly restrictive area of the modular unit as opposed to separate houses, don't you feel, in your opinion,Dr. Rundle, there would also be a problem of certain inmates, how shall I put this, creating a certain carnival atmosphere for such family visits, making snide or derogatory comments about another individual's spouse or loved one, hovering around the area where such private visits were taking

A Well, I think I explained that in this culture, with men at least, that having to bend over in that particular position creates a feeling of extreme vulnerability and embarrassment and humiliation. There is a certain degree of embarrassment, perhaps, and humiliation involved in having to strip naked in front of one's keeper and show himself in that manner. But it is not as extreme as if he is forced to assume this position.

Q In your tours of the MCC, did you ever see any evidence of guards making snide or derogatory comments during a strip search?

A No.

Q Did you see any strip searches?

A No.

Q Did any inmates tell you that they had experienced any such snide remarks by a staff member of the MCC?

A No.

Q You testified in connection with strip searches that there is a fear of sexual assault by an inmate who is forced to bend over and expose his rectum. Are you aware of any evidence of such sexual assault at the MCC?

A No, I'm not.

Q Did any of the inmates you interviewed state to you their fear of such sexual assaults at the MCC?

A Specifically there, I think not.

Q Dr. Rundle, in your testimony in the Queens House of Detention case you held up the MCC visiting room as something of a model in comparison to the visiting facilities at the Queens House of Detention, did you not?

A Yes, I did.

Q And on that occasion you did not express any reservations concerning the lack of access by visitors to the units or private rooms, did you?

A No, I didn't. But I think that should be taken in the context of the conditions at the Queens House, for example, where visiting was in a situation in which the visitor was closed in a very small, steel and glass or plastic closet and the inmate was on the other side of a plastic or glass partition and communication was through a telephone.

Q Dr. Rundle, with respect to your testimony concerning the detrimental effects of the absence of sexual relations, would it be your opinion that those effects would also depend in part on the degree of time that one was talking about of the incarceration?

A Yes.

Q Would it be your view that one days sexual abstinence would have significant harmful consequences?

THE COURT: Mr. Schaffer, there are some things even judges know. Try to hurry up, will you?

(Pause.)

Q Dr. Rundle, in connection with the visits to the roof recreation area, you testified, I believe, that in your opinion they should be made available whenever any inmate wants to go and that it should be open on a continuous basis.

Do you not see any need for the scheduling of roof recreation areas?

A Well, under the existing circumstances, of course, because the space is limited and the number of persons must use this space is large, it is necessary to provide some kind of equality under those conditions, yes.

I'm saying that it would be desirable to have

GLENN MILLER, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q Mr. Miller, would you describe for the Court basically what your past and present criminal convictions have been?

A I was convicted by the Federal authorities for conspiracy to use a communication facility and commit a felony. I received a sentence of one day, on supervised probation.

Q Approximately when did that take place?

A December 16, 1976.

Q Going back from that time, could you describe your prior convictions?

A I was convicted on July 3rd, 1975, for one sale and possession of a controlled substance. I received a sentence of four years to life.

Q What was the controlled substance?

A 50 doses of glycogen and 21 grams of hashish.

Q And prior to that did you have any other convictions?

A I was convicted in 1969 for possession of a dangerous instrument, the dangerous instrument being dynamite. I served no time. I got five years probation for that.

In 1967 I was arrested for criminal mischief and got a suspended sentence on that. Around that same period of time -- it could have 1966 or 1967. I'm not exactly certain of the exact dates. I was arrested for forgery and I received a year probation for that. I also believe I was granted Youthful Offender treatment for that.

Q Any further convictions that you can recall?

A That's all the convictions I can think of at this time.

Q Mr. Miller, could you tell us when you first arrived at the Metropolitan Correctional Center, approximately?

A I arrived on August 8, 1975.

Q Where were you housed?

A I was housed in 9 South.

Q Have you been at the Metropolitan Collectional Center continuously since that date?

A No, I have not. I left the Metrpolitan Correctional Center on Deceqber 29,1 976.

Q Between August 8,1 975 and December 29, 1976 were you at MCC continuously?

A Yes, I was.

Q When did you return to the Metropolitan Correctional Center?

A I arrived February 2nd, 1977.

Q You stated August 8, 1975, you were housed in 9 South. Did there come a time when you were transferred to a different unit?

A Yes, there was.

Q Apprcximately when was that?

A That was around the third week of August. I was moved to 7 North.

Q Did there come a time when you were transferred out of 7 North?

A Yes, there was.

Q When was that?

A That was around the middle of March 1976.

Q Where were you transferred to?

A I was moved to the 11 South dormitories.

Q Did there come a time when you were transferred out of 11 South?

A Yes, there was.

Q When?

A In reading over some of the notes that I was given from my folder, I find I was moved either the end of

June or early July of 1976, although on previous testimony I said I believed it was in August or September.

Q By previous testimony you are referring to your deposition?

A Yes.

Q Where were you moved from 11 South?

A I was moved to 11 North.

Q Where did you go after 11 North?

A I stayed in 11 North until they moved me on December 29th and when I came back on February 2nd, I was on 7 South.

Q How long did you stay on 7 South?

A Around 17 hours.

Q Then where were you moved to?

A Back to 11 South dormitories.

Q Did you stay there?

A I stayed there about two days and then I was moved back to 11 North.

Q Are you currently housed in 11 North?

A Yes, I am.

Q Have you ever been housed in 9 South?

A Yes.

Q Do you recall approximately when?

A When I first arrived at the Metropolitan

MR. YOUNG: Your Honor, for several reasons. No. 1, we are going to inquire as to the inmate committee meetings. Mr. Miller has testified he was a participant in those meetings.

Also, I intend to ask him whether certain issues were discussed at the committee meetings, and I believe these documents will substantiate his testimony as to those discussions.

BY MR. YOUNG:

Q Mr. Miller, you testified on three different occasions you were housed in the dormitory unit. Could you tell me approximately for how long cumulatively you have been housed in the dormitory unit, how many months or days?

A I figure as a total in the vicinity of four months would be in the ball park.

Q Were those periods all during 1976 and 1977?

A Yes, they were.

Q Would you describe conditions in the dormitory during the periods that you were housed there?

A Well, as far as the individual room in the dormitory itself, the sleeping accommodations, we have bunk beds. Part of the problems with the bunk beds is the bed itself sags in the middle, which really doesn't give an individual a good night's rest. It's kind of uncomfortable. You have the problem of the lint falling off the bed above you from your bed and other individuals sleeping on your bed, if not on you, if you're on the bottom one and they're on the top bunk. You also have problems when you clean in the particular living area, you have to look at the bed and filth and everything that's in the particular room.

They have a rotation for clean-up where two people would take each day mopping the floors and cleaning the tables and do general clean-up of the bathroom facilities, as well as the area where we sleep. We have the problem a lot of individuals don't want to participate for one reason or another.

They did have a general inspection from, I would say, about 8 o'clock to 10 o'clock that they would lock us into the dorms for clean-up and then they would come around and they used to rate each dorm to find out who would eat first and who last, according to cleanliness. You get points taken off for certain things that weren't done, like dirty floors, dirty tables, dirty bathrooms, whatever, people sleeping under their blankets on their beds. When they wake you up, by 8 o'clock you have to have your bed made. If you want to sleep, you can sleep on top of the bed with a blanket on top of you. There were many individuals there who didn't do this.

Then you have the problem when you want to go to sleep at night after 11 o'clock you would always find a contingent of people who sit at the table who would play cards, play their radios and laugh and joke, and it was rather impossible on some occasions to get any sleep at night.

Then you have those who get up in the morning early and those who slept late. If you couldn't get to sleep at night and want to sleep late during the day, that was impossible because you have people cleaning and you have people making noise in the dormitory and it's rather impossible to sleep there in the day also.

As far as eating, at the time that I was there there was only three tables in each dorm. You could put maybe four or five people at each table but with 20 individuals in that particular dorm you couldn't possibly put them all there, so you had to sit at the bed or on a chair or some place, if there was one available.

I know in G Dorm in particular, which is one of the two dorms that are closest to the visiting room, tjey would always take the chairs and bring them into the visiting room, so there weren't enough chairs and you had no choice but to sit on your bed and looking at the filth that was around there, I really didn't need digestion too much.

I also had the problem with the 20 men. We had one toilet and one latrine, one shower.

As far as personal property is concerned, although most of the people in there, if not all, had lockers, I didn't notice any of them locked. It was very easy to have someone swipe your personal property and if you've been here for a while or you came from another institution and had a lot of property and you were worried about it, you might as well stay there the whole time to keep an eye on it because of thefts.

At 4 o'clock --

MR. CORSI: Your Honor, I would like to object. Much of what Mr. Miller has been saying is all hearsay. I would request he limit his testimony to his personal experience.

MR. YOUNG: Your Honor, he seems to be testifying as to what he observed himself.

THE COURT: You can cross examine on this.

MR. YOUNG: I am trying to avoid leading questions. That's why I'm asking these open-ended questions.

Q Go on.

A At 4 o'clock, after we are awake for 7 o'clock morning breakfast, at 4 p.m. is when we have our first count and they lock us in the dormitories at 4 o'clock. While I was there, the way it was run is that we would stay locked in there until the food came up and they would unlock each dorm according to who was first and last and we would pick up our food and bring it back to the dormitories where we would then be locked in. On many occasions that food didn't even come there until 6 o'clock and we would be locked in from 4 until 6 o'clock.

In the morning at 8 o'clock we were locked in from 8 until 10, when we are supposed to be cleaning the dorms for the inspections, that's when the unit staff arrives. From 8 until 10 is the time when you want to catch the unit team when they first come in and it was impossible to do that when we were in the dormitories.

Also, as far as cleaning the dormitories, at the time I was there there was a shortage of mops, buckets, wringers, and the soap they used was something to the effect of window soap. I didn't see any disinfectant, and the one time that I did I'm not certain whether it was disinfectant or not, but I know the officer came around and poured a little bit in a can and that was it.

THE COURT: We were supposed to stop around now. We have lost our clerk. You know where you are at, Mr. Young.

MR. YOUNG: Yes.

THE COURT: As we go through from time to time things occur to me that I jot down. Instead of just jotting them down I think I ought to tell you gentlemen about them so you can think about them and help me with them and I can stop worrying about them myself.

So I will give you such a random thought at this moment. It occurs to me I would like to know eventually in your final briefs, among many other things that will occur to you, the textual basis, if I can use that expression, for the creation of the MCC. That is to say, where do I go to look to see the authorization for the building of this eos

UNITED STATES OF AMERICA
ex rel. LOUIS WOLFISH, et al,

vs.

75 Civ. 6000

UNITED STATES OF AMERICA,
EDWARD H. LEVI, etc.

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New York, March 11, 1977;
11.15 o'clock a.m.

(Trial resumed.)

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THE COURT: Are we ready, Mr. Young?

MR. YOUNG: Yes, sir.

GLENN MILLER, resumed.

DIRECT EXAMINATION (Continued)

BY MR. YOUNG:

Q Mr. Miller, when we stopped yesterday you had just described some of the conditions in the dormitory when you were housed there. Could you tell me when you were housed in the dormitory, were there opportunities for you to be by yourself in the dorm?

A No, there was no privacy whatsoever.

Q In any of the areas of the marginal unit or just in the dormitory room?

A There was no privacy in the dormitory room, in the commons area, in the bathrooms, on the balcony, any place.

Q Could you tell me the availability of furniture in the dormitory unit?

A The commons area itself there are four benches, bench like seats that individuals can sit on, and I have seen as many as four people sit on them.

So far as chairs are concerned, most of the chairs that they have, if they are not in the dormitory rooms themselves, they are in the visiting room, so there are very few that are in the commons area or around the TV's to sit on.

Q Is the furniture moved during the day, the furniture in the commons area? You said that there are furnishings in the visiting room. Are those the same chairs that are in the commons area at other times?

A Yes.

Q Did you ever complaint or speak to an officer or write to an official of MCC concerning conditions in the dormitory?

A Yes, I did. One particular evening I couldn't sleep, and this was after the 11 o'clock lock-in, and about 3 o'clock, when the officers were coming around to make their count, I passed them a note. I had stuck it under the door for then to receive it when they came to the dorm to take the count. I figured they would pick it up and read it, but, as it turned out, I was awake so I mentioned to them that I had put the note under the door for them telling them that I couldn't get any sleep, that I felt it was ridiculous, people staying up all night, and subsequent to that I filed a BP-9.

Q What did you say in that BP-9 or what caused you to file that BP-9?

A Because of the excessive noise in the dormitory situation. It wasn't the first time that it happened, I mean it was really bad that particular evening, and I had both officers that were there that noticed it because I told them in the letter that I submitted to them, the note, that they should take note of all the radios that were playing and the amount of people playing cards and the lights that were on and the conditions in general.

That's what I described in the BP-9. I asked for a room change from the dormitory situation to a private room.

Q At that time were you preparing for trial?

A At the time I had not been to trial; yes, sir.

Q Had you encountered other problems in the dormitory concerning the fact that you were preparing for trial?

A Yes, we only had one typewriter for 120 men at that time and I've spoken with Mr. Taylor when I was on 11 North and asked him about the availability of typewriters and he had told me at that time that 10 were on order.

After we moved up to the dormitory in the middle of March, there was a food strike during April and I had again asked about the typewriters that were going to be sent to the unit and at that time I spoke with Mr. Verdine and he told me that we were getting at least six.

MR. CORSI: I object to this again. We are getting into hearsay. Is Mr. Verdine an officer?

THE WITNESS: He is the Associate Warden and I spoke directly with Mr. Verdine.

THE COURT: I guess under the rule to which I have been cited he would be somebody in a position to speak for the agency and under that guide of agency theory, I will allow it.

Q Go on.

A And with the one typewriter for 120 men, there was a lot of problems over the typewriter, not just the fact that a lot of times we were out of paper, carbons and the ribbon was really bad, but that only one person could use the typewriter at a time and it was a writ floor and so many people were going to trial that there was always arguments over the typewriter.

Q Did you observe any of these arguments yourself?

A Yes, I did.

Q Approximately how many did you observe, can you estimate?

A Possibly only a couple, but I was in a couple myself.

Q I want to ask you to look at Petitioners' Exhibit 118 for identification and ask you if this is the BP-9 that you just described?

A Yes, this is the one.

MR. CORSI: No objection.

(Petitioners' Exhibit 118 was received in evidence.)

xx Q As a result of filing this BP-9, were any of the conditions you discussed in that BP-9 improved or, subsequent to filing this BP-9, were any of the conditions that you discussed therein improved or any of the requests that you made granted?

A After I wrote a letter to the judge that I was to go before, and talking with my lawyer, and talking with the unit manager and filing the BP-9 eventually I was moved to 11 North.

Q Approximately when did that occur?

A I believe it was the end of June or early July of 1976.

Q Mr. Miller, considering the conditions that you described yesterday and today concerning living in the dormitory, will you describe the effect on you of those conditions?

A Well, as far as living, not being in the commons area but being in the room where we sleep, beside the conditions that I have already discussed that I believe had a direct effect on a person mentally, having fear of someone come over and beat on you during the middle of the night and having your articles stolen, one individual had his radio stolen, they all contribute to a person mentally.

MR. CORSI: I did not initially object, your Honor. I think I should object. I think we ought to try and limit the testimony to individual experiences rather than surmise, really. I think that is speculation. I think that is what the testimony has been.

MR. YOUNG: Your Honor, this witness stated that he was put in fear.

THE COURT: I heard it. You may cross-examine about it.

I construe what he said to me that he nursed such a fear. You can ask him why and whether it is real or imaginary or speculative.

Q Mr. Miller, you are presently housed in 11 North, is that correct?

A Yes, sir.

Q That is a unit made up of 48 individual rooms?

A Right.

Q Could you tell me whether more than 48 people were housed in your unit last night?

A Yes, there was.

Q Where were these people housed?

A There was nine people housed on the balcony.

Q Did you observe these people individually?

A Yes, I did.

Q What accommodations were they given?

A This is the first time I noticed that they didn't give them cots to sleep on or just a mattress to sleep on. They gave them some type of a bed.

Q Also, would you describe the number of tables in 11 North?

A Yes, we have six tables that are the averate table that they have at MCC, the round tables, and we have one small table.

Q During mealtimes are there enough tables for everyone in the unit to sit down at a table to eat?

A No. There is one table in each section. There are six sections. With eight people in each section, you can't fit eight people at each table. As I said before, four or possibly five people, and the little table you could fit two.

Q Mr. Miller, I believe it was your testimony yesterday that you arrived here on February 2nd on your most recent arrival?

A Yes.

Q How many times since February 2nd have you been off of your residential unit?

A Four times that I can think of.

Q Would you describe what those occasions were?

A I was off for two times to go to the dentist. A couple of days ago I had to go to the doctor. That's the third time.

The fourth time, after pleading with Mr. Norman to take me off the floor, I went with him to the second floor to pick up about 40 envelopes.

Q Who is Mr. Norman?

A Mr. Norman at that time was the floor officer -- no, excuse me, he was the then acting counselor for our unit.

Q Have you ever made a request to staff members to be allowed to go off the floor at other times?

A Yes, I have.

Q Would you describe those requests?

A I've asked Mr. Rivera on several occasions if I could go with him downstairs when he was taking down the garbage or taking down the dirty linen just so I could have something to do besides staying in the unit itself.

Q Mr. Miller, will you describe a typical day for you at MCC?

A We wake up at 7 a.m. We go down to the unit cafeteria, whatever it is, that little section there, and we get a half pint of milk and a little box of cereal and whatever else they have there to eat, if it is edible.

We clean our rooms, make our beds. I personally clean up Mr. Rivera's room and the balcony.

We sit and we watch TV, we play Ping-Pong, we play pool, we exercise.

Then, when lunch comes up, which could be any time between 11 and 12, we eat lunch. Then, if we have a visit, we go to our visit.

We have an hour to go to the room, maybe an hour and 15 minutes to go to the roof. They generally have roof call.

We watch TV. We play Ping-Pong. We play pool. We exercise.

Then, we have dinner after the four o'clock count. We lock in at four o'clock for the count. After the count is clear we come out and then they send us for the dinner. If they have mail and it arrives at that time, they pass out the mail.

We eat. I have seen the food arrive any time from 4.30 to 6 o'clock until the food has arrived, although I will say that lately it has been arriving in the vicinity of 4.30.

After that meal we sit around and we watch TV. We play Ping-Pong, we play pool. We exercise.

The people that have enough money to afford radios can go to their rooms and listen to the radio.

Then, we lock in at 11 o'clock and then from 4.30 we wait possibly 14-1/2 hours to get up the next morning to have a half a pint of milk and a box of cereal.

Q You mean from 4.30 in the afternoon when you get dinner?

A Yes.

Q On an average day approximately how many hours would you, for example, watch television?

A Me, personally? On an average day maybe at the most three hours.

Q What do you do with your idle time generally?

A Write letters to people.

(Continued on next page.)

of your visits on the seventh and eleventh floor visiting rooms with attorneys?

Take the seventh floor first. When did those visits occur, during what hours of the day?

A They were during regular visiting hours.

Q Do you recall what those were for the seventh floor?

A The visiting hours?

Q Yes.

A They were the same as they are on the eleventh floor: 12:30 to 3:30.

Q And would you describe the conditions of the attorney visit during those hours?

A They were the same as they were for normal visitors, we had no privacy. Little children climbing on you, a lot of distractions, and it was really congested. The bathrooms were locked.

Q You stated that you also had attorney visits in the eleventh floor visiting room?

A Yes, I did.

Q During what hours of the day did those take place?

A 12:30 to 3:30.

Q Would you describe the conditions of the visiting in that, those attorney visits?

A They were the same as they were on the seventh floor. I also had visits after, after the normal visiting hours on the eleventh floor, I had a visit.

Q Are you referring to the attorney visiting hours?

A Yes.

Q Do you know what those hours are?

A Yes, they are 4:30 to 6:30, I believe.

Q Are there any differences in the conditions for those visits?

A It is not as congested. But it still isn't what one would consider privacy, and the bathrooms are still locked.

Q You stated that you have also had attorney visits on the third floor. Are you referring to the individual rooms that are located in the third floor area?

A Yes.

Q What were the conditions? Would you describe, first of all, how you were brought to the third floor?

A They bring us down to the third floor, and if the attorney is not ready they put us in the holding area and leave us in there until the attorney is ready, and if the attorney has more than one individual to see we are brought down anyway, and we are left in that holding area where I've waited as much as two hours, and when we talk to the attorney we are put in a little room with a table and some chairs and we talk to the attorney. Then after that they put us back in the holding area and they bring us upstairs.

Q By the "holding area" you are referring to what is commonly called the bull pens?

A Yes.

Q Take your most recent visit on the third floor. How long, what period of time, did you wait after the attorney visit was over before being returned to your unit?

A I wanted from about 9:15 till about 20 minutes of 11.

Q Mr. Miller, have you had any social visits while you were at the Metropolitan Correctional Center?

A Yes, I have.

Q Would you describe the conditions relating to those visits?

A Visiting hours are supposed to start at 12:30 and I've had my visitors here at least by 11:30 so they could be amonst the first group that came in.

MR. CORSI: Object, your Honor.

MR. YOUNG: We will withdraw that because you don't know that.

Q Do you know that from your personal experience or from what your visitors have told you?

A No, from what my visitors have told me.

MR. YOUNG: We will withdraw that part of the answer.

Q All right, go ahead.

A Visiting doesn't start until near 1 o'clock. I'd say 10 minutes of 1 would be right in the ball park.

MR. CORSI: I'm going to object to that, your Honor. I don't know how Mr. Miller would know when visiting actually starts.

Q Mr. Miller, how do you know?

MR. YOUNG: I'm sorry. Do you want to rule on the objection?

THE COURT: No, you may ask. That's a question to ask.

Q Do you know this from your personal observations?

A Yes.

Q Would you describe what those observations are?

A When we are brought into the visiting room, when we go into this little room before we get into the visiting room, the officer puts some fluid on your hands so that you know when the visitors leave they put their hand under that ultraviolet light. He writes down on a sheet of paper who is going into the visiting room and the time that they are brought into the visiting room. Visiting hours are often arbitrarily terminated and those that are terminated at the conclusion of the visiting hours, many times I've seen it concluded around 10 after 3.

The visiting rooms themselves, all the bathrooms are locked and have been locked now since April of '76. It isn't so bad on the inmates that are going into the visiting room, but it's especially punitive on the children.

MR. CORSI: Objection.

BY THE COURT:

Q Do you know how long if somebody wants to go downstairs and use the bathroom and come back? Have you ever seen that happen?

A They cannot come back up, your Honor. If an individual goes back downstairs to use the toilet facilities in the lobby they cannot come back up.

Q Are you sure of that?

A No, I'm not positive.

Q Have you ever seen a case where somebody went downstairs and came back up?

A I never saw a case where anybody came back down and went back up, no.

BY MR. YOUNG:

Q Have you seen cases where people have left visiting hours?

A Yes, I have.

Q What would you estimate the temperature in the visiting room to be normally?

A Normally now or normally in the past?

Q Well, take the past first and then now secondly. Say last summer, what was the normal temperature in the visiting room?

A I was cleaning the visiting room last summer and the heat in there was deplorable. I have noticed that after cleaning the visiting room I felt cold air coming out of the vents. I had mentioned it to the visiting room officer. He didn't really have any explanation for it. I don't remember the visiting room officer's name at the time but I certainly did comment about the coor air, all of a sudden appearing in the visiting room when it was so hot during the visiting hours.

The temperature continued like that, most of the time it was hot. Last summer finally they brought up a fan and put one fan in each visiting room which did help somewhat. I've seen many people in there sweating, sweat on their face. The conditions in the visiting room at the present time I'd say are complacent, they are satisfactory.

Q Approximately, can you estimate the temperature that the visiting room was at during the visiting hours during the summer months?

A No, I have no idea.

Q You said that visits are sometimes terminated, I believe was your term?

A Yes.

Q What is the shortest visit that you have had before it was terminated?

A Ten minutes.

Q Had the individual who was visiting you -- was there some reason that it was terminated at that time that you know of?

A By the time they get upstairs -- I'm not sure what time before 3:30 the visit was terminated. I have never yet seen any, any inmate come out of that visiting room where their -- the hours were terminated 3:30, as such was the case with me, and I don't know what time it was but I know we only had 10 minutes. I had mentioned to the visiting room officer that the individual who came to visit me traveled such a great distance that I would appreciate a few extra minutes and I wasn't granted that, but 10 minutes was the shortest visit I had.

Q Are there soda machines in the visiting room?

A As of February 28th there are soda machines in the visiting rooms.

Q Are there any other food or drink machines in the visiting rooms?

A There are water fountains.

Q Any food or drink machines.

A None other than the soda machine and the drinking fountain, no.

Q Are you allowed to bring food into the visiting room?

A No.

Q Approximately how many visits are you allowed to have a week?

A We are allowed three?

MR. CORSI: This is all in the stipulation.

MR. YOUNG: I believe we have also stipulated that the inmates can list six people on their visiting list.

THE COURT: Yes.

Q What is the effect of those two regulations at MCC on you?

A I have complained to Mr. Matthews at the time. He was the then acting unit manager on the eleventh floor and I asked him to see the policy statement whether it says that we are only allowed to have six individuals on our list. Because I believe that your Honor had stated that we were to have an unquestionable amount, although I'm not certain, but that is what I told Mr. Matthews, and he couldn't show me a policy statement. He said that it wasn't written up yet. But since that time I have found a case in a law book where it said that, that there is not to be any limitation on the amount of visitors that are on your visiting list. They still continue to have that ruling that you are only allowed six people on your list. And as far as having three individuals-- I mean three visiting privileges a week, a lot of people are going to be at MCC for a short period of time, and if they are in the area --

MR. CORSI: Object, your Honor.

THE COURT: Pardon?

Q Speak from your personal experience on this. You know what was the effect on you? Do you have anything else on that?

A Except that some people can't visit me during the normal visiting hours whereby they work or they can't see me on the weekend or I have another visit on the weekend, and, you know, and then plus the fact that with only three hours for a visit with some coming to visit, especially the eleventh floor, with 168 men on there, three hours is not sufficient to meet the demands of the inmates.

Q When you have had visits in the visiting room approximately how many other people have been in the room? Can you give us an estimate?

A I've seen -- I've seen days when there was only a few people in there, and I've seen days when it was really packed.

Q What is the effect of that condition on your visit?

A Well, again, we have a lot of little children that are playing in the visiting room or running around or bumping into your chair, climbing on you, and it's hard to hold on a conversation with the individual that's visiting you in a normal tone of voice because there are so many other pecople that are talking that if you want to be heard or if you are hard of hearing you have got to talk louder than the next person and it's like a roar in that visiting room with so many people in there.

Q Mr. Miller, do you recall ever raising the issue of visiting conditions in one of the Inmate Committee meetings?

A I remember speaking on it. I don't remember offhand what I had said.

Q I'm going to refer you to Petitioners' Exhibit 117 in evidence, the page of that document dated November 10, 1976, and ask you to examine paragraphs

2 and 3.

THE COURT: While he's doing that, Mr. Corsi, Mr. Young, I want to be sure I know what your stipulation means. Three visits a week you've stipulated and six people on the visiting list? Is that stipulated.

MR. YOUNG: Yes, your Honor.

MR. CORSI: Yes, your Honor.

THE COURT: If two people visit at once is that one visit or two.

MR. CORSI: That is one visit, your Honor.

THE COURT: So all six could visit together and that would be one visit?

MR. YOUNG: They would go maximum of three. I don't think we did stipulate to the maximum.

MR. CORSI: Under the guidelines, your Honor, which is part of the stipulation there is flexibility as to the numbers of poeple that come up. Again it just goes to how crowded it may be in the room, but I think we can agree that there have been stiuations from one person up to about six people that have gone up in one time in that one visit.

MR. YOUNG: I can't agree to the six.

It was my understanding that it was a maximum of three. I think anything higher than that we'd have to receive throuth testimony.

THE COURT: All right. Then let's understand that petitioners would concede that they are allowed up to three, and if the respondents claim that they allow more we will wait to hear about that.

MR. CORSI: I think you will see, your Honor, in the guidelines that children are not counted in either the six or in terms of number of people that are going up. In fact, I think Mr. Gardner testified to that, or maybe Mr. Parker, but one of the petitioners' witnesses testified to that the other day.

THE COURT: All right.

Q Having examined this document, does that refresh your recollection as to any statements you might have made at an inmate committee meeting?

A Yes.

Q Because of the intervening discussion, this is again concerning visiting condidtions, what statements did you make at that meeting?

A I complained that visits were often arbitrarily terminated before there was 25 people in that visiting room. That has happened to me.

The officer told me that -- I had asked him why he was doing this because there wasn't 25 people in the room and he said --

MR. CORSI: Object, your Honor. This is hearsay.

Q You said you complained to the officer?

A I spoke with the visiting room officer personally, yes.

THE COURT: Was this officer terminating the visit?

THE WITNESS: Yes, sir.

THE COURT: I don't know why that shouldn't be allowed, Mr. Corsi. The officer was doing it and he asked him why and the officer stated his reason, presumably, or a pretext and in either event if the testimony is true, we ought to hear about it.

A I asked the officer why he was terminating my visit when there wasn't 25 individuals in the room and he told me because there was another group that was coming up to the floor. I was later to learn from another individual that stayed in the room after me that they did not.

Q Was this another inmate?

A Yes, it was another inmate.

Q Just tell us about your own conversations.

Mr. Miller, would you describe the telephone conditions in the units that you have been in in the Metropolitan Correctional Center?

A You are talking about the present phone system?

Q Say during your most recent stay, what were the telephone conditions?

A On 11 North we have three public pay phones which services the 212 area only. We cannot speak with an operator directly or indirectly that I know of. We can speak with information. We can dial local information.

We have two long distance phones, one a prepaid and one a collect on 11 North.

The procedure is that an individual will pick up the phone and you sit and you wait for the operator downstairs to pick up the phone.. When she picks up the phone she asks you what number you want and she dials it for you.

In the mornings when we get up at 7 a.m. for breakfast, there is a phone list with 21 spaces in which we can put our names and our number, our inmate number, on the list to make a call that evening. Copies are taken down to the third floor control room where they house the operators there and one stays on the bulletin board.

Q Approximately how long -- I'm sorry, from the time that you pick up the telephone, could you tell us how long you wait to talk to an operator?

A I have had the officer on duty in the unit call down to the third floor on a few occasions because because I was complaining that the operator hadn't picked up the phone and I had been sitting there such a length of time, which just happened only last night, but has happened about a week ago where I stayed on the phone I'd say almost an hour and a half waiting for the operator and at that time I was hitting the receiver up and down figuring I would flash the light downstairs and she didn't pick it up and the officer would call down there and they would recognize the call.

It is still some time before they get through. Last night's incident they said that we would give you a break and they never did.

Q Who stated that to you?

A Officer Negron.

Q Describe last night's incident with the phone?

A Last night, about a little before nine until eleven o'clock neither phone was being used so I was on one and another individual was on the other phone.

Q Did the operator eventually come on the phone?

A No, she did not.

Q You waited until approximately what time?

A I waited until the bell rang, which was eleven o'clock. As a matter of fact, I hung up just before the bell rang because I had asked somebody what time it was and he said it was eleven o'clock and I knew the bell was going to ring so there was no sense in trying to put through my call.

MR. YOUNG: I believe we stipulated there was a change in the long distance system. Previously the hours were from one to nine. I think for about the past two weeks they had been three o'clock until eleven p.m.

Is that correct?

MR. CORSI: Yes, that was after the discussion with counsel but they changed those hours.

Q You stated that you waited between what hours again?

A I'd say it was a little bit before ten, eleven, I'd say.

Q Did you ever bring up the -- I withdraw that.

Are phone books available in the residential units?

A We have a Manhattan Yellow Pages and Tuesday evening an individual was leaving and I went in his room to say good-bye and I picked up another phone book so now we have the Manhattan directory.

Q Any other phone books?

A That's all that I've seen.

Q Did you ever discuss the issue of telephone conditions in one of the inmate committee meetings?

A Yes, we have discussed it.

Q Can you recall what you said during those discussions?

A I can't remember verbatim everything that was said, but I know that I did complain about the length of time time that an individual has to sit and wait on the phone for the operator to come through. I believe I mentioned -- it isn't in the minutes of the inmate committee meeting, but I did mention one particular incident where I had a six-minute conversation and Mr. Taylor, the Warden, was there at the time and I called the operator back to ask her why she only gave me six minutes, why I couldn't have the full ten minutes, and he was standing there at the time when this took place.

This was just part of the things I discussed at the inmate committee meeting, to tell them that if we are not cut off early, which doesn't really happen, I mean that was just that one particular time it happened to me, but I mean we do have to wait long periods of time to have the operator pick up the phone. That's all I can think of that I discussed at the meeting.

Q I am going to ask you to examine Petitioners' Exhibit 17, the first page, dated November 10, 1976, Paragraph 7, and ask you if that refreshes your recollection as to any other issues that you, yourself, discussed at the inmate committee meeting concerning telephones?

MR. CORSI: Your Honor, for the record, I think that should be Exhibit 117 and not 17.

MR. YOUNG: I'm sorry. Yes, 117.

A Yes, I had an incident and I brought it up at the inmate committee meeting whereby I made a call to an individual in New Jersey. I got the wrong number and the individual accepted the call and I hung up because it was the wrong number and I had to make the call, and I explained to the officer -- first I called the operator back and told her that I would like to make a call and I got the wrong number, that I had hung up immediately, and I would like to place a proper number. She refused.

I had the officer call up and believe he spoke with a Lieutenant Drew, but I am not certain that it was that particular instance, and I was told that I had made the call and that was it.

Q Who told you that, an officer?

A Yes.

Q Mr. Miller, it has been stipulated that conjugal visits and sexual relations generally are not permitted at the Metropolitan Correctional Center.

Will you describe the effect of the denial of sexual relations on you?

A As a human I believe that that is degrading to ask because I see no difference between me or any other individual except that I happen to be incarcerated and

A No, they were not.

Q Mr. Miller, have you ever had any jobs while you were at the Metropolitan Correctional Center?

A Yes, I have.

Q Will you describe what those jobs were?

A I worked when I was on the seventh floor, worked cleaning up the visiting room. I worked in the kitchen. I worked night sanitation.

Q You testified that you were a State prisoner here on writ, is that correct?

A Yes.

Q Did you volunteer for these jobs?

A Yes, I did.

Q Were you paid for these jobs?

A Eventually.

Q Do you recall how much you were paid?

A I was paid a little bit more than 33 cents a day. It averaged out to $10 a month.

Q Mr. Miller, how often have you gone to the roof during the last month?

A Once.

Q Is there any reason why you only went once?

A I really didn't see anything to do up there except get fresh air. You are limited to what you can do on the roof.

Q Any other reasons?

A Nothing except I just didn't want to go up there and stand.

Q Mr. Miller, when you did go up to the roof, not just this last time but throughout the time you have been in MCC, would you describe the procedure by which you get there?

A An officer come into the unit and he yells "roof" and whoever is going to the roof, we all go down to the main area in front of the elevators and the officer counts how many come out of each unit and they put us on the elevator and they take us up to the roof.

We get off the elevators and, if it is cold out, if there is a jacket available, we take a jacket and that is the procedure.

Q Approximately how many people get on the elevator at one time?

A It depends how many are going, but I've seen, I am not certain of the number, I can say anywhere's between 20 and 22, although I am not certain, but I have seen it so packed that I've told the officer that I refuse to get on the elevator because one of the elevators did fall with only a few individuals on it at one time, and I told him that I was not going to get on the elevator with so many people on there, but that I did want to go to the roof and I did not want to be denied that.

The officer more or less was arguing with me and I told him it was unfair what he was doing to us and that, if necessary, I would file a BP-9 so that I could get the privilege of going to the roof without having to worry about whether or not the elevator was going to make it safely.

MR. YOUNG: We will withdraw the part of the answer stating that the elevator had fallen on one other occasion.

Q Unless you know that from your personal observation.

A I saw the results of it.

Q Unless you saw the elevator drop or were on the elevator, we will withdraw that part of the answer.

A Oh.

Q Mr. Miller, will you describe the programs that are available to you on the eleventh floor?

A We have a Spanish-English class whereby the Spanish speaking individuals learn English.

We have a general education class for those who want to learn English, proper English, and mathematics.

Q Mr. Miller, did you shortly thereafter receive a second incident report?

A Yes, I did.

Q What were you charged with in that incident report?

A I was charged with possession of narcotics.

Q Specifically what narcotic were you charged with possessing?

A One marijuana cigarette.

Q Did you ever have a hearing on that incident report?

A No, I did not.

Q Were you placed in administrative detention as a result of receiving that report?

A Yes, I was.

Q For how many days did you stay in administrative detention?

A Three or four.

Q You were then released from administration detention?

A Yes, I was.

Q You were never taken before a committee?

A No, I was not.

Q At this time I'll show you Petitioners' been searched?

A Yes, it has.

Q Would you describe the last occasion that your room was searched?

A The last time my room was searched was when I was housed on 11 North in Room E-1134. It was some time during the end of the summer, possibly during early fall.

Q Would you describe the sequence of events relating to that search?

A Well, in the late morning hours we were all locked in our rooms. We weren't told why that I can remember. They might have said that they were going to make a count of something but they didn't say it was for a search.

Anyhow, we were locked in our rooms and, and then a contingent of officers came up and worked in groups of three and went to each individual room, unlocked his door, took him out and had him strip out in the hall in view of all the other inmates that were locked in their rooms. And we stood out there and the other two officers went into our room and searched it.

Q Were you permitted to observe that search?

A No, we weren't permitted to observe it.

Q Were any items seized from your room during that search?

A Yes, there was.

Q Would you describe what those items are?

A The items that were taken from my room that I know of, I had a can opener taken from my room, some envelopes, some pens. I had a thermos. That's all I can think of.

Q Were any items of clothing taken from your room?

A Yes, I had, I did have some, some underwear stolen. I believe socks or undershirts. I'm kind of vague on exactly what was taken.

I know the shorts were taken. That's all I could think of as far as the clothing.

Q Were any of these items returned after the search?

A No.

Q Will you describe the condition of your room after the search?

A The papers that I had on my desk were all disoriented as were the papers that were in the desk. I had to remake my bed and I had a box on my floor in the corner of the room that, where I was going back to the

State. I had put whatever I was going to bring back to the State with me in this box.

I had it all neatly packed in there and I had to repack that whole box.

Q Mr. Miller, it's been stipulated between the parties that inmates at the Metropolitan Correctional Center are not permitted ro receive food packages or packages of personal effects.

Would you describe the effect on you of not being able to receive such packages?

A Well, I'm a State prisoner and as such we are entitled to receive a 35-pound package a month exclusive of clothes and magazines.

Q You mean when you're in a State institution?

A Yes. I believe that if we could have books and magazines sent in and foods other than what we give us at the Metropolitan Correctional Center and other than what we do receive in the commissary that we might receive food that we would not only enjoy but food that woulod be nutritional, as many of the things that are offered in the commissary are cookies and candies and 4hings like that.

For the packages that we are allowed to receive at the Metropolitan Correctional Center I believe that they, that the package this last time for Christmas was 15 pounds. Whereas I believe the one year prior to that was only 10 pounds, but the items that you are allowed to receive in the package were not that of clothing or magazines and books but that of candy, cookies, and junk foods.

I mean most of the stuff that we could buy in our own commissary if we could have was the same thing we could have got in the package with the exception of cheeses. They did allow us to bring in cheeses and meats if the meats were properly wrapped.

Q Mr. Miller, would you describe conditions relating to the commissary at the Metropolitan Correctional Center?

A Excuse me?

Q The conditions relating to the commissary and your experience with it?

A Right now the present list, the present commissary list there are at least 21 or 27, somewheres around there items that are not properly priced. We've had price changes and these items are not properly priced now. An individual can spend up to $15 a week with a limit of $50. If he does buy a carton of cigarettes, a bottle of Tasters Choice coffee, and the

$4 in dimes or even $5 in dimes that they now offer, only leave about $1.85 left to spend.

The sweat suits that we have in the commissary since I'd say around November, we've been complaining because they have been out of the large size jump suits and still to this day I know not whether we have the large size jump suits or not. I don't believe we do.

Many of the items some individuals may receive it whereas others may not. They also change the prices. I've had a couple of incidents myself where the prices were changed from a higher price to a lower price and back to the higher price. When they do have an inventory I can't personally remember when we were notified in advance of the inventory that was to take place. And when the inventory did take place we could not double up on the previous week or the subsequent week to the inventory.

Q What do you mean an inventory?

A In other words, they don't sell any commissary for that particular week and they, they hold an inventory of the items that are available in the commissary.

Q So for that week you have no commissary?

A That is correct.

Q Are there always adequate commissary lists for everyone?

A No. As a matter of fact last week we, we have to turn our commissary list in, for my particular unit on Sunday evening and Monday morning I went up and asked Mr. Rivera personally for a commissary list because they didn't have any Friday night and they didn't send any up at all, and I believe that some of the individuals either had to fill out their commissary list on a blank piece of paper or if they had blank commissary lists that they had on hand.

Q Mr. Miller, you stated that you can get coins from the commissary. These I assume are coins for the telephone and newspapers?

A Yes.

Q Are those coins deducted from the $15 a week amount you can spend in the commissary?

A Yes, they are.

Q Mr. MIller, can inmates bring coins in from the visiting room?

A As of about a week ago they had a new ruling or a new policy at the Metropolitan Correctional Center which states in effect that a new inmate arriving at the institution may bring up to $2 coins from the visiting room within a ten-day period.

Q Are any other inmates allowed to bring coins in from the visiting room?

A No, just the new people.

Q Mr. Miller, have you encountered any problems in having money that was sent to you credited to your account?

A Yes, I did.

Q Would you describe that?

A I had $10 money order sent to me and then I believe the previous -- next week --

MR. CORSI: Your Honor, I'm going to object. I don't think that Mr. Miller would know when it was sent.

Q Do you have any basis for personal knowledge on this? How do you know that this was sent to you?

A I received a pink slip, the receipt that said that I received the money.

BY THE COURT:

Q Pink slip from whom?

A From the, from the administration. I mean when the money is sent in they credit it to you acccunt and there is a receipt they give you, a pink slip of paper with the date that you received it and the amount you received it, with your name and your inmate number.

And they send it to you when they administer the mail.

MR. CORSI: Withdraw the objection.

BY MR. YOUNG:

Q What was the problem that you had concerning that?

A I received two different money orders. I had two different pink slips of paper with two different registration numbers on there. By registration number I don't mean my inmate registration number. Both for $10. And I had been complaining to I believe it was Mr. Brown that one of them had not been accredited to my account because when I had bought commissary you knew it was going to be another, there should have been another $10 added on there and there was not.

And that, that was the only problem I really experienced with the commissary.

Q After making that complaint did you ever receive notification or any document indicating that that amount had in fact been credited to your account?

A I honestly don't remember. I mean I should because if it was $10 an individual would know if he had the money for his account but I honestly don't remember if I did or not.

Q Mr. Miller, have you ever observed mice or rodents in the Metropolitan Correctional Center?

A Yes, I have.

Q Would you describe the occasion when you observed that or the time frame?

A The mice, I mean times when I observed mice was when I worked night sanitation when I was lodged in the seventh floor unit.

We used to sit up and watch the eleven o'clock news and then either watch a late night movie or special or Johnny Carson or something.

We'd be sitting there by the TV. The TV would be low because we didn't want to disturb the other inmates that were sleeping. And we could see the mice running along the hallway. On two different occasions I have seen mice in the kitchen running across the like a vent, whatever.

I've seen flies. I have always complained about the flies and we have brought it up at the inmate committee meetings, the problems with the flies and have requested an exterminator. I did see an exterminator but this was when I was on the seventh floor. He came in and he sprayed around the kitchen and around the hallways but since that time I have not seen an exterminator and the flies are multiplying.

Q You stated that you saw mice when you were on night sanitation. When did you cease being on night sanitation?

A When we moved from 7 North unit to the 11 South dormitories which was in the middle of March, 1976.

Q Have you observed any problems with lice or body insects?

A Yes.

Q Will you describe those, please?

A I went to the doctor two or three days ago because I had been scratching and I knew that we had a case of body lice recently in the 11 South dormitory.

Q What was the basis of that knowledge?

A Well I saw them pushing a mattress out into the hallway to put on the elevator and I had inquired what the problem was and they said it was body lice.

Q Who did you ask?

A I asked one of the officers. But after I went to the doctor to have them examine me for the body lice which I said was two or three days ago, I talked to Mr. McKnight, which is the hospital administrator, and I asked him what he was going to do to rectify the problem. And he told me that he had ordered a large supply of, of, I guess medicine of some kind that you put on your body for them and the applicators and that he had felt they were on top of the problem.

Q Would you describe the availability of sanitary supplies in the dormitory units when you were housed there?

A Well, we did have a shortage at the time that I was there of mops, buckets, wringers, disinfectant, soap. The soap that they give us was some type of a window soap, not necessarily a regular cleaning soap.

(Continued on next page.)

Q Was that to be used in cleaning your units?

A Yes, it was.

Q Is laundry soap available?

A Usually.

Q Or was it?

A Usually laundry soap is available. Now they sell it in the commissary.

Q Concerning linens, have you encountered any difficulties in acquiring linens?

A Yes. As far as the dormitory is concerned, the first 50 individuals that go for their linen will probably receive pillowcases, but the others most definitely will not.

As far as the normal -- I mean as far as the private room units are concerned, usually we receive the sheets and pillow cases now. There was times when we would go a couple of weeks and not receive them, but now more or less we can receive a change of sheets and pillow cases, although if you don't get the pillow cases when they first come up, they generally run out. Not last week, but two weeks prior to that, for two weeks in a row they didn't have pillowcases on Sunday even, and I believe the linen arrived on Friday.

Q How about issues of clothing, underwear and so forth; do you always receive issues of that clothing?

A When you arrive at the institution they issue you three pairs of each, that includes jumpsuit, the undershirt and the shorts and the socks.

Q Are these all new clothing?

A No. They are clean clothing.

Q Thereafter when you need to replace them can you always get them?

A No, you cannot. I asked Mr. Rivera about a pair of socks the other day myself and he told me taht he had found one pair and that I could have it if I wanted, but the socks were really in demand.

Q Are there irons on the residential units?

A Not any more.

Q Would you describe the condition of the rooms in 11 North in terms of furniture and so on?

A Yes. The room consists of --

MR. CORSI: Your Honor, I suppose this is in the stipulation.

Q Would you describe the condition of the furniture in your rooms?

THE COURT: You know, you want me to

say that he had submitted this?

THE WITNESS: Yes, that is a carbon copy.

MR. CORSI: To whom did you submit this?

THE WITNESS: Mr. Rivera.

MR. CORSI: When did you submit it?

THE WITNESS: March 2nd. As a matter of fact, Mr. Corsi, it was on March 3rd that I actually handed it to him.

MR. CORSI: No objection.

BY MR. YOUNG:

Q That was March 3rd of this year?

A Yes.

(Petitioners' Exhibit 122 was received in evidence.)

xx Q Mr. Miller, would you describe the condition of the uniforms that you wear at the Metropolitan Correctional Center?

A Yes. They are ill-fitting, they are uncomfortable, they are degrading. They make us really look out of place.

Q What is your waist size?

A I have a 30-inch waist.

Q What is the size of the uniform that you have?

eoa6 Miller-direct

A When I arrived on February 2nd they issued me three uniforms, two of which were size 42.

Q That is not the waist size, though, that is the size of the uniform generally?

A That is the size of the uniform in general, yes.

Q Did you ever raise the issue of uniforms or uniform conditions at an Inmate Committee meeting?

A Yes, I did.

Q Do you recall what the issues you raised or what you said at that time?

A I believe that I told them that I would like to again have an iron to iron in our units so we don't have to go to the visiting room looking the way we do with our wrinkled uniforms.

I can't remember everything I discussed at the meeting. There was a lot of things that I discussed.

Q Mr. Miller, would you describe the condition of the food at the Metropolitan Correctional Center?

A The food is unappetizing, insufficient in quantities, not properly prepared.

Q Have you ever observed anybody or did you yourself ever not receive a complete meal?

Q During the service of food have you observed any problems relating to service?

A Yes.

Q Would you describe those?

A I have personally observed inmates putting their hand directly into the salads and take out tomatoes or whatever they wanted.

I don't see the people that work in the kitchen wear gloves, hats or aprons, although they are now available. The officer does not often observe he serving of food on the food line.

Also, when they sent up a shortage of bowls or something like that, we have had problems where the officer wouldn't call up. Or if he did call up they wouldn't send up the bowls. In one particular instance with Miss Amy, our case manager, I mentioned to her one day that we had pudding or it was Jello, and I asked her how she expected us to put the pudding or the Jello into our bowls since they didn't send up the proper utensils to do so.

Many times they don't send up a soup ladle or salad tongs or any one of the things that you use, and she told us to use our spoons that we had from our tray, which, as you know, are teaspoons, and I can't

A He told me he is going to put his foot up my ass. And Officer Marshall was there and heard the conversation.

That was the worst experience I had coming from there.

I had an experience going in where the officer wanted to go through the same procedure and I told him to call the unit manager, that I thought it was unnecessary to be strip searched going into the visiting room, and Mr. Rivera came down and told the officer that it really wasn't necessary, but the officer that was on duty then was a new officer anyway.

Q Do you happen to recall that officer's name?

A Yes, his name was Mr. Davis.

Q Any other effects of those searches on you?

A I really feel they are unnecessary. I mentioned it to different officers that I couldn't see the reason for such a search coming out of the visiting room because with the search that they conduct when we go into the visiting room in which they pat the individual down, we don't wear many clothes anyway. I told them that it would be impossible, I had told many officers that it would be impossible for us to smuggle in guns or anything like that.

I mean if we have it on our person I'm certain they are going to be able to feel it without having to degrade us by taking off all our clothes and going through the type of searches that we are subjected to.

Q Mr. Miller, during the times that you have been at the Metropolitan Correctional Center have you ever had a key to your room?

A Yes, I have had a key to my room.

Q When was that?

A That was when we were on the seventh floor, where we were all issued keys so that if we went into the room for -- if we left our rooms we could then lock the doors so that we wouldn't have anybody else going into our rooms or stealing anything or what have you.

Q During what time period was that?

A This was prior to and including the middle of March, 1976.

Q Do you presently have a key to your room?

A No, we do not have keys to our room at this time.

Q When you leave your room does the door remain unlocked?

A No, the door is locked when we leave our room.

Q When it is locked can it still be opened from the inside?

A From the inside, yes.

Q And can it be opened by turning the knob from the outside?

A No, it cannot.

Q How do you get into your room then if you have left it? How do you return to your room?

A Either we ask the floor officer to open the door with a key or we use a kitchen knife or a for, or a spoon and we use the handle and we open the door by moving the latch.

Q Could you open somebody else's door using that utensil?

A It happens.

Q What's the effect on you of not having a key for your own room?

A Well, another individual could go in your room and take something from you. We just had a case recently where an individual had his watch stolen.

Q Was this based on your personal knowledge or --

A Yes.

Q How do you know this?

A Necause I told him to ask the officer if he would have a shakedown on our room, on our unit so that he could get it, get the person's watch.

MR. CORSI: Your Honor, this all sounds like hearsay. I move it should be stricken.

MR. YOUNG: Your Honor, we will withdraw the part about the watch unless Mr. Miller personally saw the watch being taken or something.

A I didn't see the watch taken per se. I had a personal picture taken from me as well as a cup, a drinking cup. And I reported it to the officer, and Lieutenant Keifer came up to my room and I had two pictures of the same person in my possession. They were the only two pictures that I did own. I gave him one picture and I told him the other picture was almost identical from it from a different point of view. And I said, "I would appreciate that picture, if you'd be able to get it for me, as well as the cup."

He asked me if I had any idea who might have it and I told him I did, because the individual had been in my room when I was there and they moved him to the ninth floor. And I told him chances are he would probably be -- would be the one that would have had it. And I never did get either one.

Q Could you describe the air conditioners at MCC, the ventilation conditions during the times that you have been there?

A After I first arrived at the Metropolitan Correctional Center the rooms were so cold that many of the individuals clogged up the vents, and usually what we would use would be toilet paper and roll it up and stick it in all the vent slats. And on one particular occasion we had one of the officials from the Metropolitan Correctional Center go around to each room or some of the rooms and check either the temperature or the flow of air or something that was coming out of the vents, and I know that about a month prior to his coming into my room I had put in toilet paper, fresh toilet paper off the roll, and when he came into my room and took the toilet paper out, he checked the vent -- I was there watching him -- and I went to put that same paper back into the vent and it was black soot on the edges of all the toilet paper that was facing the vent.

Q Do you recall personally raising the issue of the air temperature at any of the Inmate Committee meetings?

A Yes, I did. I even went as far as telling Mr. Taylor, the warden, myself, and he had a man come up and put a -- some type of a machine in my room to check the temperature of the room. He left it in there I guess for maybe a 24-hour period.

Q Do you recall the first date that you raised this issue at the Inmate Committee meeting?

A No, I do not.

Q I show you Petitioners' Exhibit 117, the first page is dated November 10th, item 5, and ask you if that refreshes your recollection as to the date that you raised that issue?

A Yes.

Q Was this in fact the date that you raised the issue?

A Yes, it was.

Q Do you recall again raising the issue of the air temperature at a subsequent meeting?

A I mentioned it quite often to the unit team. I don't know how many times I mentioned it at the Inmate Committee meetings. I'd have to scan the minutes to see.

Q I show you Petitioners' Exhibit 117, the second page of the portion dated December 23, 1976, paragraph 13, and ask you if that refreshes your recollection as to a subsequent meeting at which you raised this issue.

A Yes.

Q Is that the meeting you were referring to?

A Yes.

Q Mr. Miller, did there come a time when the temperature improved or the room seemed warmer?

A When I -- after I left, when I came back I was housed in the 11 South dormitories, and the -- I'd say that the temperature of the dorm was complacent. When I was moved over to 11 North, the room that I'm in now, C-1121, is a fairly cold room.

Q How is the temperature in that room -- say yesterday and today?

A I'd say it's uncomfortable.

Q Uncomfortably hot or uncomfortably cold?

A Uncomfortably cold.

Q Mr. Miller, would you describe yourself as a religious person?

A Yes, I would.

Q Would you describe the religious services at the Metropolitan Correctional Center that you have observed personally?

A As far as regular services are concerned, on Sundays we have the Catholic priest, Father Tolentino goes to each individual unit and says mass. I know in our unit he says it in the little TV room. He used to say it on the balcony and in one of the tiers but there was so much noise in each one of them that he finally closed the little TV room with the TV and the benches and the exercising equipment and everything in the room. And because he has so many units to do, the amount of time that he spends on mass for each one is -- is not enough for an individual to even acquire anything from the services itself. He has no time to give a sermon. And many times he's cut short, such as last Sunday he arrived in our unit, I guess it was about a quarter to 4. We had like a 15-minute service. He left out most of the mass. He doesn't have time to spend with the individuals after services. Neither does he have the time to spend before the services except to gather the people together and talk to them while he's running around the unit telling everybody that Catholic services were in process.

Q Is he available to you during the week?

A I have seen Father Tolentino in our unit no more than five times from the time that I've been in MCC.

Q Have you observed any other services, other than the Catholic services you just described?

A Yes, I attend Protestant services also.

Q Would you describe the conditions under which those are held?

A Well, Protestant services that I attended are more or less a Bible study and what it is is myself and a couple of other inmates go to one inmate's room and Referand Lothrop comes to our unit on Thursdays and Sundays, and he will come in the room and we will go over whatever section of the Bible we are going over. And he's stay in the room I guess, maybe -- he might spend about 14 minutes there. But he has so many units and some other men to attend to that he really can't spend much time with us. We have asked him to see if he couldn't come earlier or spend more time or be there more often, as well as asking Father Tolentino, but the fact is they don't have a chaplain there all day long that I know of.

And when you come back from court, again you sit in that bull pen, or holding area, until they are ready to bring you upstairs.

Q This is the holding area on the third floor, is that correct?

A Yes.

Q Returning from court approximately what length of time do you normally wait before returning to your unit? What length of time do you want in the holding area?

A Well, last time I came back from court, let's see, that was last night. Last night I was there from about 4 o'clock until, I guess it was, almost 6, and now that the time before that that I was there from 4 o'clock until 20 minutes of 7.

Each time I complained to the officer that was on the third floor there that was in charge of receiving and discharging, which is a Mr. Herbert, and I told him that, "You know, I'd like to be brought upstairs earlier," if it was at all possible.

One of my complaints was that there was 16 individuals in one of the holding areas, all the seats were taken and he had people sitting on the table in there. And you know I don't smoke cigarettes, sign it.

Before I was brought upstairs I had to be given a medical test by one of the MTA's that were on duty and after that then I was taken upstairs, after being issued my clothing.

Q During that eight-hour period approximately how much time did you spend in the holding area?

A The whole time.

Q You testified you were given a medical examination?

A Okay. I had said the medical examination took about five minutes.

Q So other than that five minutes you spent the rest of the time in the holding area, is that your testimony?

A With the exception of getting my clothes.

Q How long did getting your clothes take?

A Ten, possibly 15 minutes.

Q Mr. Miller, would you describe the sound levels in the units of MCC in which you have been housed?

A The 11 South dormitories are exceptionally loud. You have to turn the TV up to hear the TV because with people playing ping-pong, pool and just standing around the common area talking in general it's very hard to hear the TV so you have to turn the TV up.

When the TV is up people that want to talk, it appears to me that they talk extra loud or it sounds like everybody is talking loud, but you cannot hear when you talk on the telephone, or at least I can't hear when I talk on the telephone because the noise in the dormitories is exceptionally loud.

As far as the other units, the noise at times is loud, but it's not loud all the time.

Q Concerning the dormitories, can you get away from the noise that you describe in the common area by going into the dormitory room?

A You can get away from the majority of the noise, but you have to remember that everybody is still playing cards and playing their radios. That is when most of the radios are playing, one person wants to outdo the other person with his radio because one person wants to listen to Spanish and one wants to listen to English and between that and the card games and the talking, it is rather loud in the rooms too.

Q Would you describe the sound levels in the visiting rooms?

A It depends on how many people are in the visiting rooms, but it is such a small room, sometimes there are so many people in there that it is really loud. A lot of the visiting room officers will allow more than 25 people to be in there knowing that so many people would like to get a vist, they generally do allow the rooms to get packed.

Q Mr. Miller, would you describe the staff on the eleventh floor?

A A lot of the officers that come on the floor apparently don't know what their specific duties are. They seem confused --

Q First, just describe the memorandums of the staff and then we will talk about their functions.

A The names of the officers on duty?

Q Just identify them by title. In other words, do you have a unit manager?

A We have a unit manager, we have a case worker --

MR. CORSI: Your Honor, I think this too is a part of the stipulation.

MR. YOUNG: I believe it is. What I wanted to know is where these people were housed and how available they are to get to the inmates.

to 11 North?

A Mr. Rivera, Miss Amy and the secretary and the counselor, when he is on the floor.

Q Based on your experience in both units, is staff more available on 11 North than 11 South?

A Yes, sir.

MR. YOUNG: That is all the questions I have at this time, your Honor.

CROSS EXAMINATION

BY MR. CORSI:

Q Mr. Miller, on your direct I believe you stated that when you were on the dorms after 11 p.m. radios were playing or cards were being played and that it was quite loud. During the time that you were in the dorms did you ever request to see a doctor about problems with sleeping or anxiety?

A I did on one occasion.

Q What occurred at that time?

A He gave me some sleeping pills.

Q How long did you take those pills?

A A week tops.

Q What was the reason that you stopped taking those pills?

A I felt as though they weren't necessary any more.

Q When radios were on in the dormitory did you ever ask the other inmates to lower their radios or shut them off?

A Yes, I have.

Q What has happened when you did ask that?

A Most of the time this would at least turn them down.

Q You further testified that most people, if not all, had lockers while they were in the dormitory, but that you would fear a loss of personal property. Did you lose anything when you were in the dormitory?

A Yes, I did.

Q What did you lose?

A I lost a bowl of sugar.

Q A bowl of sugar?

A Yes.

Q Did you lose anything else?

A Me, personally, nothing that I can think of.

Q I believe that you indicated on direct that you had filed a BP-9, and that is Exhibit 118 in evidence, concerning being housed in the dormitory and requesting to be transferred over to one of the other units and that you spoke to your lawyer about that and also to the judge in your criminal case. Do you know if either your lawyer or the judge contacted the institution about transferring you to 11 North?

A I don't know, Mr. Corsi.

Q But you were subsequently moved after you talked with Mr. Rivera, or whoever the unit manager was at the time, is that correct?

A Yes, I would say so.

Q You further testified as to the effect of living in the dormitories that there is a fear of assault or having property stolen. During the time that you were in the dormitory, at nights after the 11 o'clock lock-in, were you involved in any fights or assaults?

A Verbal or physical?

Q Physical?

A No.

Q Did you observe any fights or assaults?

A I didn't observe any, no.

Q You were on the dorm for about four months, is that correct?

A Yes, I would say so.

Q Since you came back on February 2nd, I believe you incicated that you have left your unit on four occasions. Then later on in your testimony I think you mentioned that in addition you went to the roof once, is that correct?

A Yes.

Q So then it would be five times?

A Right.

Q Is it also true that on a daily basis you are offered an opportunity to go to the roof?

A Yes, I testified to that.

Q You indicated that part of your typical day is exercise. You mentioned that there is an opportunity for exercise in the morning and in the afternoon, during the day. What type of exercise do you do?

A We have a universal machine there, leg press machine, they have a bench press machine, they have dip bars.

Q Do you use the universl machine?

A Yes, I do.

Q That is the one that is on the unit, is that correct?

A Right.

Q Do you use the one up on the roof?

A Prior to the one that we received in the unit I did use the one on the roof.

Q Why don't you use the one up on the roof?

A At this time I am just going through a state where I am really not exercising. No particular reason, I just procrastinate.

Q So that is the reason why you don't go up to the roof even though it is offered to you?

A Yes.

Q Is it true that during the spring you participated in a weight-lifting contest?

A Yes, that is true.

Q And what happened in that contest? Were you one of the winners?

A Yes.

Q That was one the machine up on the roof, is that right?

A Yes.

Q Mr. Miller, you testified that on a number of occasions,I don't want to put any number on it, but that visits of yours have been terminated arbitrarily, is that correct?

A Right.

Q Have your visits ever lasted the whole time?

A Yes, they have.

Q To the end of visiting?

A Yes, they have.

Q More often than not?

A No, I wouldn't say that.

Q Were these visits in your view terminated arbitrarily?

A Usually because they are bringing up more people from the lobby.

Q Do you have any reason to doubt that that is the reason why your visit was terminated?

A No, I don't.

Q You also indicated that you had observed in the visiting room that a visitor had to go back downstairs to use the facilities and then I believe you said you did not see those poeple come back up to the room.

A Right.

Q Do you know why they did not come back up?

A Actually, no, I don't know why.

Q I believe you described a visit that occurred fairly recently where you had only 10 minutes with your visitor and that she had come from a great distance, is that correct, and you had asked for an extension.

A It wasn't recently, Mr. Corsi, no.

Q When was it?

A It was while I was on the seventh floor.

Q Had you ever requested a special visit for a visitor who was coming into town?

A Yes, I have.

Q Was that request granted?

A Yes, it was.

Q By the way, on that visit when you were on the seventh floor did you give the institution any advance notice that she was coming from a great distance and therefore you needed extra time?

A I didn't know.

Q But on the other occasion when you did you were granted a special visit, is that correct?

A Yes, sir.

Q During the time that you were at MCC how many visits did you average. let's call them social visits, a week?

A A week?

Q Or a month?

A Three, four a month.

Q Where does your family live?

A My family lives in Westchester County.

Q Approximately how far in distance, miles, from here?

A One way?

Q Yes.

A Fifty miles.

Q The same with your friends that have come to visit you?

A No. Some of them live further than that. I have people in Middletown.

Q Since you have been back how many long-distance phone calls have you averaged a week?

MR. YOUNG: Can I ask for a clarification. How many has he attempted to make or how many has he made?

Q How many have you made?

A Two, possibly three.

Q Do you remember having your deposition taken -- it was taken a couple of times -- the first time starting on the 10th of February? How many long-distance phone calls have you made since then?

A Maybe eight.

Q Long-distance calls?

A Yes.

Q Do you remember the question?

A Yes, I do. Well, being that we are convicted felons we're only allowed to have one maybe every 12 days in some institutions. Some institutions it's one a month. I don't know the correct procedure per se because I have yet to be in population.

I've only gone through the reception state incarceration.

Q When you were at Westchester County jail and I believe you testified you were there twice --

A Correct.

Q -- in '69 and '75, how many calls were you permitted there?

A No more than two a month.

Q You testified at one point you had made a long distance telephone call and had gotten a wrong number and then you weren't permitted to have the number redialed.

Did that ever occur again?

A No, it did not.

Q You testified that when you were going to the roof you would take a jacket if there were any available. Was there ever an occasion when you went to the roof and you wanted a jacket and you were not

Q That you cannot het a pillowcase?

A That and sheets.

Q When did that occur?

A It's happened on the seventh floor and I'm not certain if it happened also on the eleventh floor but not lately.

Q Even if you didn't get a new pillowcase and sheet you were permitted to wash them, is that correct, in the washing machine?

A Yes.

Q You indicate that you do recall having your deposition taken on the 10th of February?

A Yes.

Q Do you recall having this question asked and giving the following response? This is at page 84 starting at line 23 and going to 85.

> "Q By the way, did it ever happen to you that you did not get a clean pillowcase when there was a linen exchange day?
>
> "A No, it never happened to me."

Was that a truthful answer at the time you gave it?

A It was the best answer that I could think of at the time, Mr. Corsi.

Q Thank you.

You indicated that in your room on occasion it's been too cold and that you complained that it was too cold. I think you further indicated that someone from the MCC staff came up and took a reading [illegible] the room, is that correct?

A Yes.

Q Did you observe him taking that reading?

A Yes, I did.

Q Did you observe the mechanical device that he used to make that reading?

A Yes, I did.

Q What did that device read?

A It read 72 degrees.

Q Do you have any reason to doubt the accuracy of that device?

A No, I have not.

Q You also indicated that on occasion certain portions of the meal have been missing. I think you mentioned things like dessert or salad, Jello, fruit and cake. And you complained about that, is that correct?

A Yes.

Q Isn't it a fact that if that food were missing it was because it had been taken by inmates and had been stored away and then at night you could see the other inmates eating that food that was missing from the meal?

A No, I wouldn't say that that was completely true.

Q Was it at least partly true?

A Yes. You would see individuals that would save the food that they received for their meal and eat it later in the evening instead of eating it right then and there, yes.

Q On any of the searches that you've encountered after visiting has anyone ever touched you?

A No.

Q You indicated, Mr. Miller, that there is nothing for you to do on the units. I take it you get bored then?

A Yes.

Q How long after you have arrived at MCC does that boredom set in?

A I guess it depends on the individual.

Q You.

A Me. You figure three weeks or a month.

Q Mr. Miller, when you were at the Westchester

County jail how many showers were there for the men in your unit?

First of all, how many men were in your unit?

A In which, during which stay are you referring to, Mr. Corsi?

Q I believe it would be the last one.

A The last one I'd say about 30.

Q How many shares did you have?

A One.

Q In the search of your room when you were on 11 North that was a unit search and you were brought out into the little cluster there. How long did that search take.

A For my room?

Q Yes.

A I'd say aroun d 15 minutes.

Q Could you if you wanted to look into your room when they were searching?

A At that time?

Q Yes.

A For that search, yes.

Q When approximately was that search?

A I'd say that was during the summer of '76.

Q Would it refresh your recollection if I said full $15 in one week that you were permitted to spend in the commissary, is that correct?

A Right.

Q Approximately how much is the normal balance in your commissary account?

A I don't think I've ever had more than $20.

Q A $20 balance in your account?

A Right.

Q You testified on cross-examination that when you complained concerning the temperature in your room an MCC staff member came and measured that temperature and that his instrument indicated that it was 72 degrees in the room?

A Right.

Q Did the room seem cold to you?

A I told him that the room was cold, that I believe I told Mr. Taylor, the Warden, that although I appreciated him taking the readings and everything that the air in that room temperature at least should be adjusred somehow because even though it was 72 degrees and 72 degrees may be a comfortable temperature for one walking around in the streets or in a normal room where it's 72 that in our rooms 72 was awful cold.

Q Other than the reading onthat instrument did

A Yes. I worked in diagnostics and I taught inmates physical therapy.

Q Were you subsequently incarcerated at Attica?

A Yes.

Q Were you employed there?

A Yes, I worked as a dietician for the institution.

Q Were you subsequently incarcerated at Fishkill?

A Yes.

Q Were you employed there?

A Yes, I worked there as a clerk.

Q Would you just explain in a sentence or two the nature of your handicap?

A I lost my balance six years ago from a cause which has not been determined.

Q Dr. Seiller, when did you first arrive at the Metropolitan Correctional Center?

A In March 1976.

Q What unit were you housed in at that time?

A 11 North.

Q How long did you stay in 11 North?

A Until the middle of July of the same year.

Q What happened at that time?

A I was transferred to Springfield. I had come from Springfield and was retransferred to Springfield

Medical Center.

Q When did you next return to the Metropolitan Correctional Center?

A The end of October 1976.

Q What unit were you housed in at that time?

A 7 North.

Q How long did you stay in 7 North?

A Until November 23rd of the same year. Then [illegible]eturned to Springfield again.

Q Wher did you next return to the Metropolitan Correctional Center?

A January 21, 1977.

Q What unit were you housed in then?

A For three days in 7 South and then I was transferred to 11 North.

Q Have you been housed in 11 North since that date?

A Yes.

Q Dr. Seiller, at any time during the periods that you have been at the Metropolitan Correctional Cen4er, have you observed individuals being housed in commons areas?

A Yes.

Q Would you describe those incidents?

A Yes, they are normally housed in the balcony area of the upper unit.

Q Can you tell me, say, the first time you observed that?

THE COURT: I don't think we want to go through that again, Mr. Young. I don't understand what you think you are getting from all this repetition besides a bored judge.

MR. YOUNG: I am sorry, your Honor.

THE COURT: But you ought to keep that in mind.

MR. YOUNG: There is one fact I would like to bring out since I believe it is in -- well, I would just like to bring out one fact concerning the common areas housing, if I can, and I will go on to the next area.

(Continued on next page.)

Q Would you describe what you observed in 11 North during June 1976?

A There was one incident where people could not, were not accommodated with cots or beds. They would sleep on the floor and on couches, et cetera.

Q Approximately how many people were involved in that incident?

A I would say about eight or ten.

Q Since your most recent return to the Metropolitan Correctional Center I believe you said it was January 21 or 22?

A January 21.

Q Since the time of your return approximately how many times have you left your unit?

A Sick call, attorney visit, a total of about eight times I would say.

Q How many of those were visits [illegible]?

A I think about four times.

Q Would you describe for us a typical day during your stay at the Metropolitan Correctional Center say during your most recent stay?

A Yes. We get unlocked between 6.30 and 7 o'clock in the morning. Then I go out and see if I can find a table to eat my breakfast, get my breakfast, Q During the hourse other than that lock-in time, approximately how many of the remaining 16 hours do you spend in your room?

A Most of the time actually, except for the times I go out and eat.

Q Is there any reason why you spend that amount of time in your room?

A Yes, I have difficulties in, in walking around. There are stairs to the common area which are quite complicated for me. And then it's very noisy at the place so I'll just stay in my room.

Q During the times that you were in your room does a guard ever come by to check your room?

A During the daytime or at night?

Q During the daytime?

A Nor really to check it. I mean he may call somebody and may look in but he's not coming to check. During the daytime there is no, nobody looks in your rooms.

Q Do you have a key to your room?

A No.

Q Did you ever have a key to your room during any of your stays at MCC?

A No. As I came here the first time last year some people had keys but I did not get one.

MR. YOUNG: I don't know whether it's necessary, your Honor, to take Dr. Seiller through the same description of how the door locks when it closes and they have to use the spoon to Unlock and everything.

THE COURT: No, I would think not.

Q All right. Just let me go on to the next question.

Have you ever had things stolen from your room?

A Yes, three times?

Q Would you describe those occasions?

A Yes. Once, first time was last year, just ahout ten days after I arrived. I was in the shower. As I came back my watch was missing and the coins I just had purchased.

The second time which was about one month later only cash money disappeared. So it was, I don't know where I was at the time, but I was out of the room. And the last time was actually the day before yesterday. I was for sick call.

Q What was stolen at that time?

A $5 in dimes and a carton of cigarettes.

Q Do you have personal knowledge of whether unit.

Q If you were permitted to leave the unit you would leave it despite your handicap?

A Yes. I would like to go to the library, a day at the library or something like that at least to move around somehow.

Q Dr. Seiller, have you had attorney visits?

Well, you testified that you had some attorney visits.

Would you describe approximately how many attorney visits you've had during your stays at the Metropolitan Correctional Center?

A All the stay, all the three?

Q Yes.

THE COURT: Mr. Young, are you going to take me through the children climbing around the feet and all that again? If so, stop.

MR. YOUNG: Dr. Seiller has some specific situations.

THE COURT: Look, unless it's going to be disputed that they had some attorney visits in the regular visitors' rooms and no privacy and crowded and some in the private rooms which are different I don't want to hear it again.

Is that disputed by the way, Mr. Corsi?

MR. CORSI: That there are attorney visits going on --

THE COURT: That their visits were of the nature we've heard.

Is there a dispute about that?

MR. CORSI: No, your Honor.

MR. YOUNG: I believe that we have been able to stipulate that it occurs at times. Our position is that it occurs all the time.

THE COURT: That's all right. It will only occur at times even if you give me more times so let's go on to something else.

BY MR. YOUNG:

Q Just let me ask one question on an issue.

Have you ever had to sit on the floor?

A First visit, yes.

Q The first attorney visit you had?

A Yes.

Q You've also had family visits?

A Social visits, yes.

Q Approximately how many have you had?

A About two every week.

Q Is that from relatives or from --

A Friends and relatives, yes.

Q Are you always strip searched incident to a visit?

A I am patted down when I go out to the visiting room and most of the time I'm not strip searched when I come back.

Q What about when you leave the visiting room? Are you strip searched on every occasion then?

A That's what I mean. No, most of the time I am not.

Q You are not strip searched?

A No.

Q What do they do when they leave the visiting room?

A Most of the time again there are exceptions where nothing happens at all. Most of the time I am just patted down.

Q Has any guard ever indicated to you or do you have any knowledge as to why you're not strip searched?

A I would assume on account of my condition.

Q Have you had specific problems because of the limited number of people on your visiting list or the limit of six people on your visiting list?

A Yes.

Q Would you describe that problem or the problems?

A The problem is that I can only put six people so if I have somebody who is not on this list I have to write up a whole new list and submit it to get such person approved. I can exchange the visiting lists.

Q Have you had people who would visit you but can't because of that limitation?

A I had one visitor who came unexpected without my knowledge and I spoke to him on the phone and I found out he was here. And he was not admitted because he was not on the visiting list.

MR. SCHAFFER: Objection. Move to strike.

Q Can I ask was his name on your visiting list?

A No.

MR. YOUNG: We will withdraw the part about whether he was here, but the fact that he was not on the visiting list, and I think that Dr. Seiller spoke to him can remain.

Is that all right?

MR. SCHAFFER: No objection as to that.

THE COURT: All right.

Q Have you had specific incidents regarding for example children in the visiting room that have caused problems for you?

A Not really except that I sometimes, people change their diapers or something. I mean it's not specific incidents.

Q You've helped people change diapers or what?

A It's only three tables there so if I sit on the table.

Q By the way, what is the temperature generally in the visiting room when you're there?

A It's, I don't know the temperature, but it;s hot.

Q Has this had any effect on your visits?

A Yes. I had to terminate an elderly gentleman coming. I had to terminate a visit because I saw he was in bad condition.

Q Do you recall his name by the way?

A Yes, Dr. Ernest Meyer.

Q Can you tell me how the visting guards have conducted themselves with regard to visitors and inmates based on your personal observation?

A I did not understand that.

Q Well have you observed the conduct of the guards relating to visitors and inmates during visiting periods?

A Yes, it is sometimes it's a bit rude.

Q Would you describe what you base that statement on?

MR. SCHAFFER: Objection, your Honor. Occasional rudeness.

THE COURT: Sustained.

Let's go on to something else.

Q Dr. Seiller, have you had any particular problems in relation to the telephone system at the Metropolitan Correctional Center?

A Yes.

Q Would you describe those problems?

A It's mainly with long distance calls.

Q What problems have you encountered?

A There is a telephone list that has only 21 time slots. There are 48 people on the unit. So if I'm not with the first people coming out in the morning after I'm unlocked I may find this list is already full so I cannot get my name on.

Q Any other problems?

A It's very long waiting time before you get an operator.

Q Whenever you've attempted to place long distance calls have you always been able to place them?

A No.

Q Dr. Seiller, I'm going to show you Petitioners' Exhibit 125 for identification and ask you if you can identify it?

A Yes. That's the daily telephone list of February 27, '77. My name is on here on the 3 o'clock time.

Q Were you able to make that telephone call at that time?

A Yes.

Q How many names are on this list?

MR. SCHAFFER: Objection.

THE COURT: Yes. We can count them up. You can argue about that. Let's move on.

Are you offering it in evidence?

MR. YOUNG: If the Government doesn't object.

MR. SCHAFFER: Just a very brief one.

VOIR DIRE EXAMINATION

BY MR. SCHAFFER:

Q Where did you get this list, Dr. Seiller?

A It's posted on how do you say a board.

Q You removed it yourself?

A Yes, I did. It's a copy, you know. Original goes to the telephone operator. The copy stays and it's disposed of in the evening.

MR. SCHAFFER: No objection.

There was a question and answer, your Honor, just a short time ago I wasn't able to hear concerning telephone calls after Dr. Seiller stated that he had encountered long waits for the operator.

THE COURT: We're not going to go back through it. Have Mr. Corsi tell you about it later.

Let's go on, please.

BY MR. YOUNG:

Q Have you encountered any other problems with the long distance system that you can recall?

A No, I do not recall any at this moment.

Q How about the local system, Dr. Seiller, any problems with that?

A Only with inavailability of proper coins. One of the telephone was, one of the telephones you could only use dimes. No, you could only use nickels and the commissary didn't sell any. So you had to pay quite some more money if you want to make a phone call.

Q Did you have any difficulty with phone calls upon your arrival at MCC in using the phone system?

A Yes. I couldn't make any phone calls before I could buy coins.

Q How long after you arrived let's say this past time before you were permitted to buy coins?

A This time?

Q Yes.

A About one week.

Q By the way, does the commissary provide both dimes and nickels?

A Now, yes. They did not. They did not do it as I came here.

Q For how long after you came here did they not do it?

A I came on January the 21st. The first nickels were sold on February the 14th.

MR. YOUNG: Can I have just a moment, please, your Honor?

(Pause.)

T6

Q Dr. Seitler, I show you Petitioners' Exhibit 126 for identification and ask you if you can identify this document.

A Yes, this is memorandum proposed regarding the purchase of coins for use for newspapers and telephones.

MR. SCHAFFER: No objection.

(Petitioners' Exhibit 126 was received in evidence.)

xx

Q This states that coins can only be purchased in $4 or $5 amounts, is that correct?

A Correct.

Q Does that cause any problems?

A I don't have any problems, no.

Q Dr. Seitler, in the unit in which you are now housed are telephone books available to you or not?

A No.

Q How do you get a telephone number if you don't have it already?

A I call somebody on the outside and have them look it up.

Q Is there any way, without using that procedure, that you can get a telephone number?

A I think I could ask for somebody to go up

Q Which officer?

A The unit officer.

Q So you request him for the list?

A I saw it as it came up.

Q Have you seen it since that time?

A No.

Q Are magazines available on your floor?

A I didn't see any. I mean I saw some old ones, but I am not in the central area so when magazines come up whoever is there gets them so I couldn't tell youi how often they come or I didn't see any.

Q Dr. seitler, you stated that you filed a BP-9 on mail problems. Could you describe some of the mail problems that you have had?

A It is mainly delay. Some of my legal mail arrived opened.

Q Could you specify any letters, any legal letters that arrived open?

A Yes, I got one letter from the Legal Aid Society that was opened. One letter from a law firm in Miami, Benjamin & Cassel, was opened.

Q When you say they were opened, do you mean opened in your presence or outside of your presence?

A No, they arrived open.

One letter from the United States Senate was opened.

Q Who was that from, by the way?

A Pardon me?

Q Which senator was that from?

A Birch Bayh.

Q Did the envelopes from the attorneys indicate that they were in fact -- indicate on their face that they were envelopes from attorneys?

A The Legal Aid Society, yes, Benjamin & Cassel says attorneys at law, yes.

Q Did the letter from the United States Senate indicate on its face that it was from the United States?

A Yes, it says United States Senate, and it was signed by the senator.

Q By the way, did you subsequently file a BP-10 concerning the same subject as your BP-9 on mail?

A Yes.

Q Yes?

A Yes.

THE COURT: Mr. Young, about how much longer will your direct examination of Dr. Seitler be?

MR. YOUNG: I would assume approximately

A I was locked in, I was told it was for the count.

Q You remained locked in for four hours?

A Yes.

Q You left this court last Friday at approximately 5 o'clock p.m. I think everyone will stipulate to that. What time did you get back to your room?

A 6:30.

Q Where were you held in the meantime?

A In the pen.

Q This is at the MCC?

A In MCC, yes.

Q How many people were in the bull pen when you got there on Friday?

A Including myself, 16.

Q Approximately how long is that room? Do you have any estimate as to it?

A There's no way I can --

Q Did all of the people who were in the bull pen last Friday have seats?

A No, some of them were sitting on the table or on the floor.

Q You were testifying, I believe, when we stopped on Friday about the telephone system at the Metropolitan Correctional Center. I believe respondents have stipulated that at the present time long-distance telephoning is scheduled from 3 o'clock until 11 o'clock p.m. Did you have an opportunity during the last week to observe the switchboard on the third floor during that period?

A On Thursday evening, as I had an attorney visit.

Q And approximately what time did you observe the switchboard?

A About 10:30 in the evening.

Q Was the operator seated at the switchboard?

A No, there was no operator. As I came up to my unit I was trying to make a call, and there was no more operator on duty.

Q You stated that you observed the switchboard at approximately 10:30. Was somebody other than the operator seated there?

A No.

Q Was the operator anywhere in evidence? Could you see her anywhere in the area?

A No.

Q Have you had any other problems recently with the long-distance telephones?

A On Saturday I was trying to make a long-distance call from 3 to 3:30. Then I had Officer Norman call the switchboard or the supervisor, and he was informed that the operator did not come in yet. so we had to wait.

Q Did Officer Norman state that to you?

MR. SCHAFFER: Objection.

THE COURT: Pardon?

MR. SCHAFFER: Objection. This is hearsay, your Honor.

MR. YOUNG: Could I determine whether Officer Norman made that statement to him?

THE COURT: Did the officer tell you that?

THE WITNESS: Yes.

THE COURT: Well, look, some latitude you have to give people who are in prison who can't find out facts very well. If you are going to be advised that actually this hearsay information is incorrect, it is so readily within your ability to get the correct information that I am going to allow this.

Q Dr. Seiller, you and I had a legal visit on Saturday, I believe, was it?

A Yes.

Q And approximately how long did that last?

A Ten minutes.

Q Were you subjected to any form of search following that visit?

A Yes, strip search.

Q Did that include a visual anal examination?

A Yes, a rectal examination.

Q Have you been so searched on previous attorney visits?

A No.

Q Do you know the name of the officer who conducted that search?

A Yes, Mr. Block, B-l-o-c-k.

Q Dr. Seiller, you testified on Friday concerning certain problems you had had with the mail. You also testified I believe that you had been transferred on several occasions from MCC to Springfield?

A Two times, yes.

Q Was the mail that was sent to you at MCC after that transfer forwarded to you at Springfield?

A No. No mail was forwarded. Some of it was returned, and I got the -- from the original senders the envelopes were stamped on it "Return to

Q Dr. Seiller, would you describe the air or temperature conditions at the MCC?

A It is hard to describe it. It was rather cool but not actually the temperature, the airflow. I hear people complaining about too cold but it is not so much the cold but the airflow.

Q Do you have any way of controlling the airflow?

A No, there should be some device but it blows directly in your room, it blows directly on you.

Q Have you observed people taking any steps because of this airflow problem?

A I observed them putting blankets around them or stuffing the outlet up. I do this myself.

Q When you describe putting blankets, is this just in their rooms or --

A When they walk around because they feel chilly.

Q Around the corridor area?

A Yes.

Q Dr. Seiller, I believe you testified on Friday you were a clerk at the MCC on one previous stay?

A Yes, while I was here from March to July.

Q While you were performing that role did you file a memo to one of your unit staff concerning the food at the Metropolitan Correctional Center?

A I would say the quality is rather good.

Q How about the taste?

A I would say it is not very tasty.

Q What about the fiber content of the food?

A I think in connection with diets there are shortcomings but I don't think the general food service.

Q How about the food preparation and service? From what you have observed in your unit, what would you describe concerning that?

A I would say the food service is rather unsanitary.

Q In what fashion?

A The food carts are not properly cleaned and kind of smelly. Inmates serve the food in the pantries, they receive no instructions about hygiene or anything.

MR. SCHAFFER: Objection.

Q Just describe what you can observe.

MR. YOUNG: We withdraw that part of the answer.

Q What have you observed concerning food service?

A We have no serving cloths, no hats, people touching food with their hands before it is served.

Q Do they wear aprons?

A I think I saw one time an apron,yes -- excuse me, aprons, caps and plastic gloves are available. Nobody tells them to wear them.

Q Have you seen these items?

A Yes, I have seen them.

Q Dr. Seiler, have you found any foreign objects in your food?

A Not in my food but I found them in food.

Q Would you describe the occasion when you found those objects?

A I worked In the kitchen. One of the people complained he found glass and I removed the glass.

I found hair on several occasions. I think it cannot be avoided, people just standing around.

Q Dr. Seiller, are you on a special diet at the Metropolitan Correctional Center?

A I am on a low cholesterol diet.

Q Why are you on this diet? Who put you on that diet?

A A prescription on account of hypertension, high blood pressure, things like that.

Q Prescribed by a member of the medical staff?

A Dr. Ruggiero.

Q Is the food for that diet always provided to you?

A I wouldn't know.

Q What do you mean by that?

A There is no day menu posted.

Q Do you know what you are supposed to be receiving for the diet?

A Without a menu I don't know. I have a rough idea.

Q Dr. Seiller, have you had an opportunity to observe the menus posted in the units at the MCC?

A Yes, but the last two weeks there is no menu posted.

Q Prior to that time when the menus were posted, did you have an opportunity t compare the food served with the items listed on the menu?

A Yes.

Q Were the items listed on the menu always served?

A No.

Q What items generally were missing?

MR. SCHAFFER: Objection to the form of the question.

MR. YOUNG: He just stated some of the items were not served.

MR. SCHAFFER: The characterization generally makes it rather vague.

THE COURT: It probably does.

You may ask whether there is any pattern of omissions.

Q Did you notice that certain items were missing more than once? In other words, in a general pattern?

A Yes, soups.

Q Any other items?

A Not food items, no. Not in a pattern.

Q What other items?

A Utensils are usually short. People cannot eat soup with a spoon. It is cold when delivered and no spoons or no bowls.

Q Dr. Seiller, the first time you arrived at the Metropolitan Correctional Center what articles of clothing were you issued?

A I think one set of underwear, one jump suit and one pair of sneakers.

Q This last time you arrived what were you issued?

A I was issued three sets of underwear, three jump suits, two towels, one pair of torn sneakers and three pair of socks.

Q Were the items of clothing that you were issued new to the best of your knowledge?

A No, the jump suits were torn. I had to return two of them.

Q Have you gotten replacement for them?

A I got one replacement.

Q Were you provided with any handkerchiefs or Kleenex?

A No.

Q Dr. Seiller, did you ever file a PB-9 concerning clothing at the MCC?

A Yes, I did.

Q Is Petitioners' Exhibit 127 already in evidence, that PB-9?

A Yes.

Q As a result of filing this PB-9 were the items you requested or complained about resolved?

A No, they were explained.

Q Dr. Seiller, did you subsequently file a PB-10 on this issue or not?

A Yes, I did.

MR. SCHAFFER: Excuse me, the PB-9 is that already in evidence?

MR. YOUNG: Yes, 127.

Do you want to see it?

(Handed to counsel.)

2 Q Do you have a copy of that PB-10?

A I think I have, yes.

MR. YOUNG: Your Honor, I don't appear to have it now, I thought I did. So we can get a copy and I will file it.

THE WITNESS: Excuse me, the PB-10 was in the form of a letter because I could not get a form so there is three items in one letter replacing the original PB-10.

I think that is what you have there.

Q Dr. Seiller, will you describe the effect of being required to wear a jump suit at the MCC?

A On me it is very uncomfortable because of balance if I have to use the toilet of anything, undressing causes me quite some problems.

Q Do you have to get undressed to use the toilet with the jump suit.

A Yes.

Q By the way, Dr. Seiller, are there any female guards on your floor?

A Unfortunately, yes.

Q Why do you say unfortunately?

A I think for a normal man it is quite embarrassing when you have to do private affairs in your room and suddenly a women is looking in. It is a little bit against one's dignity.

Q Dr. Seiller, I think you testified you arrived at the MCC on three separate occasions?

A Yes.

Q Would you describe the conditions of your room on each occasion when you arrived at the room?

A One word, filthy.

Q In what manner?

A It was just the previous occupant apparently didn't clean it and it was left that way when somebody new arrived.

Q Were you issued new blankets when you arrived on each occasion?

A No.

Q Was there a blanket already in the room?

A A used one, yes. It was in use. I had to use it.

Q Dr. Seiller, did you ever file a PB-9 concerning the lack of barbering services at the MCC?

A I believe I did.

Q Was that also part of Petitioners" Exhibit 127?

did the washer become available?

A I would say two or three weeks.

Q Is that washer and drier always available for your use?

A When it is not occupied, yes.

Q Have you ever had to wait to use the washer?

A Yes.

Q Dr. Seiler, would you describe how long it takes to post a money -- to post money to your account when you arrive at the MCC in the form of check or money orders?

A Money orders is usually credited one day after it arrives.

Checks are credited after 30 days. You are notified in advance but actually credired after 30 days.

Q Has it been stated to you, as an official stated to you it takes 30 days?

A Yes, it has been stated to me.

Q You testified I believe that you have had a degree in finance and you have been involved in financial activities.

To the best of your knowledge, what are the general banking practices concerning the length of time before checks are deposited to an account?

MR. SCHAFFER: Objection, your Honor.

THE COURT: Can we stipulate about that?

How long does it take a c heck to clear these days?

MR. SCHAFFER: I have no idea, your Honor. Mine never clear in time.

THE COURT: I will let him testify as to that.

Q Dr. Seiller?

A Checks within the city must clear within five days by law.

Checks within the domestic United States must clear within 12 banking days.

Q Dr. Seiller, did you file a PB-9 explaing this fact and complaining about money at the MCC?

A I believe I not only complained about the delay but I complained there was some credit missing.

Q I show you Petitioners' Exhibit 128 already in evidence and ask whether that is the PB-9 that you have been referring to?

A Yes, that is it.

Q Did you subsequently file a PB-10 concerning this same issue?

A I believe I did but I am not sure.

Q I refresh your recollection and show you

Petitioners' Exhibit 130, page 2, already in evidence.

A Yes, I did.

Q Did you receive a response to this PB-10 on that issue?

A No.

Q Did you ever have a specific check yourself while you were at the MCC, personally receive one?

A In my account or me in person?

Q Whether you had it in your hands.

A No.

Q Dr. Seiller, when you were transferred out of the Metropolitan Correctional Center, I believe the second time -- no, the first time you were transferred out -- was your money given to you before you left or transferred with you?

A No, no money was given to me. I had received it after approximately seven weeks.

Q Did you take any steps to get that money before you actually received it?

A I received it after I wrote a complaint to the MCC Warden.

Q Did you also notify your attorney concerning it?

A Yes.

Q And the second time you left the MCC to go to

Springfield, was the money in your MCC account taken with you or transferred with you at that time?

A No. I left here on November 23rd and after my return on January 21 I had not received the money in between.

I started some research and I found the money had never been transferred.

Q Were you advised by an official that the money had never been transferred?

A Yes. It was credited.

Q Your account had been credited with it?

A Yes, here.

Q When you returned from Springfield this last time did you have money with you?

A Yes, approximately $30 cash.

Q How did you get that money?

A When you are transferred from another institutio you get cash money so that you can immediately get commissary when you arrive to buy commissary.

Q After you arrived at the MCC, what did you do with the cash?

A Handed it over to the receiving and discharge clerk against receipts.

Q Did you have to ask him to deposit it to your account?

A You don't have to ask him, it is an automatic proceeding.

Q When was the first opportunity after you returned to the MCC this last time for you to have commissary?

A I returned On Friday, commissary orders were collected on Sunday evening. Commissary is delivered on Monday so I ordered Sunday evening after my arrival because I needed it.

Q Did you receive the items you ordered on Monday?

A No. I was told by the case manager that I had no money in my account.

Q Dr. Seiller, let me show you Petitioners' Exhibit 133 for identification.

Can you idenitify this document?

A This is a standard commissary order currently in use at the MCC commissary.

MR. SCHAFFER: No objection.

xx (Petitioners' Exhibit 133 for identification was received in evidence.)

Q Dr. Seiller, I then show you Petitioners' Exhibit 134 for identifiation and ask you whether you can identify this form.

A This is the same form but submitted by me on February 27, 1977 to obtain commissary.

Q And there are certain notations on this form. About two-thirds of the way down the first column you have indicated that you were ordering three apple pies and one cherry pie. Did you receive those items?

A No, it says "out."

Q Did you receive a substitute for those items?

A No.

Q Dr.Seiller, have you made certain notations on this form other than --

A Yes, I marked down a total of 27 items which are either unavailable or the prices are not correct any longer. In the meantime this number has increased because this was already the end of February.

Q Would you describe the notations that you used to indicate each of those?

A Yes, I put a cross behind items that we had prices in the meantime increased. I put "co" behind items which were at the time not available. I also marked here zero because it states here that watches are -- you can purchase watches in excess of your $50 monthly spending limit, but there are no watches here, but I bought a watch, but it is not listed on this price list.

Q You mean there is no space to order a watch on this document?

A No, sir.

MR. SCHAFFER: Your Honor, before this document is admitted for all the purposes that Dr. Seiller indicated I think there should be some foundation as to what basis he has knowledge that the prices are wrong or the items are not available.

MR. YOUNG: I can go into that at this time.

Q Dr. Seiller, are memos posted periodically on the bulletin boards in the units indicating increases in prices?

A Yes, they are posted and quickly they are moved again.

Q I show you Petitioners' 135 for identification and ask you whether this is an example of some of the memos that you were describing.

A Yes, these are some of the examples. I want to mention one other thing. Frequently, like yesterday we ordered commissary. There is no order form at all. You have just to put on a blank paper. So people who have never ordered commissary before, they don't even know what's there. There is no item list posted or anything.

MR. SCHAFFER: No objection to Petitioners' Exhibit 135.

As to 134, I think we still need a foundation as to those items that are supposedly not available.

(Petitioners' Exhibit 135 was received in evidence.)

xx Q Dr. Seiller, would you tell me -- I note that the date on Petitioners' Exhibit 135 is -- well the first -- the second document is dated January 28, 1977, and the first document is dated February 7, 1977, and the first document is dated February 7, 1977. Are the price increases indicated in these memorandums indicated here?

THE COURT: "Here" being 134?

MR. YOUNG: Yes, referring to Petitioners' Exhibit 134 for identification.

Q Were the price changes indicated in these memorandums made on this document prior to your receiving it?

A No.

Q What date did you file this document, Petitioners' Exhibit 134?

A February 27, '77.

Q One final question on 134. How do you know that the items next to which you put a zero are not available?

A These two items, it's clearly evident, it says "out." In other words, I didn't get them. The other items I had ordered previously and was told that they are in stock. Same with fruits, they are not available.

Q All right. How do you know that fruits are not available?

A I ordered them previously. They said they have to make new prices.

Q You also put a zero next to the $2 worth of dimes.

A You cannot order $2 worth of times any more. You have to order a minimum of $5.

Q How do you know that?

A From the memorandum.

MR. YOUNG: All right. I would offer Petitioners' Exhibit 134 into evidence at this time your Honor.

MR. SCHAFFER: No objection.

(Petitioners' Exhibit 134 was received in evidence.)

xx Q Dr. Seiller, you testified that you can order coins for use in the phones and to purchase newspapers from the commissary, is that correct?

A Yes, within the $50 spending limit.

Q Do you normally spend the total amount that you are permitted to spend in any given week?

A I think your question would lead to a misunderstanding. You have a spending limit of $50 a month. There is actually, the maximum you can spend out of this $50 is $15 a week. In other words, you can actually buy only about three weeks and the last week you don't have much money left. I spent the money within my limits, but sometimes it happens I ordere for $15, not knowing correct prices, I may be over, I may be under, but I spent my $50 during the month.

Q Dr. Seiller, would you compare this commissary list with the commissary items that are available at the state institutions and federal institutions that you have been at?

A I did.

Q Would you describe how they compare?

A I think --

MR. SCHAFFER: Objection.

THE COURT: I will hear it. Go ahead.

A I think commissary is very badly stocked.

Q How does it compare, say, with Springfield?

A Even with Sprinfield it is still very badly stocked.

Q And by "badly stocked," what do you mean?

A There is nothing jourishing on this whole commissary list except I think some little sausage and fruits. Fruits are not available or were not available. Now they are again. And I don't think it helps very much to load up people with junk food. They are hungry. They want something to eat.

Q What items along that line are available, say, at state institutions that you have been in?

A In state institutions you can buy canned meat. You can buy anything, canned fish, cheese.

Q Any other things that you can think of that aren't available at MCC?

A There is no comparison between the state commissary list and this one. You cannot ocmpare the two. It's a complete different thing. It simply is completely different, the commissary itself.

Q How is that different?

A I can only talk about the State of New York because I was working there. State purchases are centralized. Various institutions draw on a central contract. The prices are certainly relatively low and they don't need high stocks because they can immediate delivery of items throughout. Here we have frequently items are sold out and they are not replaced for two, three weeks. And then the offer is -- more items are offered.

Q All right, Dr. Seiller, it's been stipulated between the parties that persons cconfined at the Metropolitan Correctional Center can only receive food packages on Christmas and I believe religious holidays, certain items can be received from outside. Would you describe the effect on you of not being able to receive such packages?

A I think it's -- first thi[illegible], the receipt of packages is not so much of receiving items. I think it is more or less a symbolic affair. Someboy who sends you a package has to think about you, he has established some sort of relationship, which for me is more important than the items in the package. But I certainly would like to have certain items, like vitamin tablets or other things I cannot buy from the outside.

Also, I think it would have a positive effect on the commissary because right now I have no means of comparing prices, but I think some of the things are rather high in price.

MR. SHAFFER: Objection.

Q On what do you base that?

THE COURT: All right. Well, I don't think it amounts to anything, although I think I will receive it for his impression of the situation, not as proof that the prices are high.

Q Dr. Seiller, prior to your incarceration did you use an electric shaver?

A Yes.

Q And did you use one in the state prison?

A Yes.

Q Were you permitted to possess your own electric shaver in the state prison?

A You were actually encouraged to have electric shavers because they did not want razor blades around there.

Q I think the parties will stipulate that you are not permitted to have electric shavers at MCC.

Dr. Seiller, are you permitted to have a typewriter in the state prisons?

A Yes.

Q Did you have your own typewriter when you were in the state prison?

A Yes.

Q Were you permitted to have your own stationery in the state prisons?

A You could have stationery with only your name on it. For using the address, you had to use the address of the prison without mentioning it was a prison.

Q Dr. Seiller, would you describe the orientation program that you received each time that you arrived at the Metropolitan Correctional Center?

A What orientation program?

Q Did you receive any orientation program?

A No, I didn't receive an orientation program.

Q Were you ever advised as to the names of the persons on your staff or their functions?

A No, I found out after a while.

Q Dr. Seiller, based on your observations, do staff members and do unit staff members and other staff members at MCC normally wear name tags?

A Usually when we have visitors, yes, outside visitors.

Q Do they on other occasions?

A Very rarely.

Q Dr. Seiller, during the times that you have been at the Metropolitan Correctional Center have you encountered any non-English-speaking inmates?

A A good number, yes.

Q What languages did those individuals speak?

A Mainly Spanish, French.

Q Any other languages?

A Thai, Korean, German, maybe some others. It's what I remember now.

Q During the time that you were housed in units with these individuals, did you have occasion to notice whether the notices posted on the bulletin boards were posted in the languages of the individuals who spoke those languates?

A I noticed that one or two times that there were notices posted in Spanish, but I don't think there is any other languages that are used.

Q Did you have occasion to observe,when such individuals were housed in your units, whether the staff members or at least one staff member in the unit spoke the language of those individuals?

A Spanish, yes, but anything else, no.

Q For these other individuals, how did they communicate with the staff?

A As best as they can; mostly with their hands.

Q Dr. Seiler, you have been transferred out of the Metropolitan Correctional Center on two occasions. When were you advised that you were going to be transferred on each of those occasions?

A Usually the evening before your departure, about 8 o'clock.

Q What's the effect of being advised at that time?

A It's bad because you may have visitors coming in, you can't inform them any more of your transfer.

Q Would you describe the sequence of events when you are transferred? You stated that you get the notice at 8 o'clock the previous night?

A Yes, it's posted at 8 o'clock.

Q What happens from that time on? Describe the sequence.

A Really nothing happens as far as I am concerned because they fly me usually. I am picked up in the morning, usually I am woken up at 4:30 first and then I am picked up, depending on the time the marshals come to pick me up, around 6:30, and my belongings are brought down.

Q Are you permitted to take all your belongings with you?

A I take them out of my room, but I think there is a regulation on the marshal's side that the are not allowed to carry anything in excess of the size of a shoe box.

Q When you have been transferred to MCC -- from MCC to Springfield, what period of time has elapsed before you received the items you could not take with you?

A From Springfield to MCC?

Q No, from MCC to Springfield.

A Three weeks.

Q Are you provided with cartons in which to pack these items?

A I am not provided. I have to find them.

Q All right. How do you find them?

A Mr. Young, there is a lot of things going on in a prison and they are not in the regulations, so you just find them.

Q All right.

Dr. seillers, you arrived at the Metropolitan Correctional Center three times. From the time that you arrived at the institution, what time elapsed before you reached your room?

A I would say an average of five to six hours, sometimes linger.

Q Was that on each of the three occasions?

A Yes. I would like to say it's a minimum of five hours, and a maximum of eight hours.

Q And where were you kept during that period of time?

A In the bull pen.

Q And did you receive anyprocessing during that period of time?

A Yes, you are -- the property which you bring with you, your money, is registered. In my case, because I am coming from a medical facility, I don't have to be seen by a PH, or this was rather short, and you get your institutional items, issue items, and that's the end of it.

Q Approximately what percentage of the five to eight hours' time period that you described do you spend in the bull pen?

A Let's turn this around. I think the processing, total processing, doesn't take any longer than a maximum of 45 minutes.

Q Do you spend the rest of that five to eight hours in the bull pen?

A Yes.

Q Dr. Seiller, have you ever obserbed anyone taking sound readings at the Metropolitan Correctional Center?

A Yes, recently.

Q Approximately what time period was that?

A Pardon me?

Q Approximately what date was that?

A Must have been about three weeks ago. I am not sure of the date.

Q Would you describe what happened at that time?

A Yes, the man come several times to the front entrance of the unit and stays there, and has a little hand-held machine, takes a sound reading, but the positive effect it had on the unit was that since everybody noticed the man is coming to read sound, the sound level considerably decreased for the whole day, which was quite a comfort.

Q Did it decrease in advance of his taking his readings or not?

A I would say after it was noticed, yes, the officers saw to it that the television is kept a little bit down, etc.

Q You mean after it was noticed that he had arrived?

A Yes.

Q Dr. Seiller, is there always a guard in your unit at the Metropolitan Correctional Center?

A Pardon me?

Q Is there always a guard in your unit at the Metropolitan Correctional Center?

A There is a guard assigned. He is not always present.

Q Would you describe what happened on June 3rd of last year? Describe the sequence of events.

A What happened on June 3rd?

Q Would you describe the incident concerning Mr. Riccardi which I believe you have personal knowledge of.

A Oh, yes, Mr. -- I think is name is Ciro Riccardi -- attempted suicide by hanging in his cell, and two inmates broke open his cell and got him out on the floor, but he didn't breathe any more, his heart had stopped, and because I was on the unit I went there, so I get him back.

Q All right. Approximately how long after he was first noticed did any member of the medical staff arrive at the location?

A A unit officer at the time was at the sally port supervising inmates going to the roof, so there was no officer on the unit, else they would not have to break open the door.

It took about two minutes before a unit officer who knew what was going on called. Then it took about seven to eight minutes before the riot squad came and about 20 minutes before some medical staff came.

Q I show you Petitioner's Exhibits 136 and 137 and ask you whether you recognize these documents.

A Yes, this is a letter of recommendation written by Officer Albert Weir, June 3rd.

Q Does this relate to the incident you just described?

A Yes.

This is another letter of June 14th, written by Officer Victor Cruz, same thing.

THE CLERK: Which is which?

MR. YOUNG: 136 is Weir and 137 is Cruz.

MR. SCHAFFER: Your Honor, we object to these on the grounds of relevance. It's undisputed that Dr. Seiller helped save this individual's life. These are letters of commendation for his efforts. I don't see what the relevance is to this lawsuit.

THE COURT: Well, they are corroborative. I will take them.

(Petitioners' Exhibits 136 and 137 were received in evidence.)

MR. YOUNG: Your Honor, I have no further questions of this witness.

CROSS EXAMINATION

BY MR. SCHAFFER:

Q Dr. Seiller, in addition to the convictions that are listed on Petitioners' Exhibit 124, you were also convicted of crimes in Germany, were you not?

A Yes.

Q How many such convictions?

A One conviction and, how do you say, a fine, for bankruptcy violation.

Q It was ror --

A Bankruptcy violation.

Q Specifically, it was for bankruptcy fraud, was it not?

A Yes, yes. Bankruptcy violation under German law is always considered a fraud.

Q You mentioned that on one occasion you were locked in at night and attempted to get the attention of the officer because an inmate across the hall was sick?

A Yes.

Q How did you know that individual was sick?

A He had told me already before he was locked in and I was trying to get some medical staff to look at him.

Q Was he trying to get anybody's attention at that time?

A Yes, he was trying it, and then because he couldn't get anybody, he looked quite bad, he came to me, so I told him if he really feels badly, there is an emergency, that he should knock, because he didn't know what to do.

Q You heard him knocking on that day?

A Yes.

Q I believe you testified on another occasion that an inmate did get the attention of the card and asked for pain medication. Did you overhear that conversation?

A Yes.

Q You were locked in your room at the time?

A Yes.

Q Where was that room in relation to your room?

A It was just on the same range, you know.

Q Was it across or was it on the same side?

A It was across.

Q Do you know, based on personal knowledge, whether that inmate ever hot any medical care that evening?

A The guard brought some tablets and then he told him he had to wait until next morning to go for sick call.

Q You testified that on one occasion you went to the roof for recreation?

A Right.

Q Were you given a jacket on that occasion?

A Yes.

Q And you stated that you got cold and you came down again?

A Yes, you know there's nothing for me to do but sit down or something, so --

Q When you asked the officer to be taken down did he bring you down promptly?

A Immediately, yes.

Q Have you ever experienced any delays in being brought to the visiting room when you had a visit?

A Very short delays, yes.

Q How short?

A Ten minutes, 15 minutes.

Q That would be the longest?

A Going to the visiting room?

Q Yes.

A Yes.

Q During your most recent stay at the MCC have you had any visits cut short?

A One, yes.

Q When was that?

A I think it was last week on Tuesday.

Q And after what period of time was it cut short?

A We are not allowed very much. I think it was close to an hour.

Q What time was it terminated?

A About, I would say around 2:30; 2 o'clock, 2:30.

Q Was the visiting room full on that occasion?

A Unbelievably, yes.

Q Dr. Seiller, on the average how many telephone calls do you make per week?

A Long-distance, local?

Q Take each one separately.

A Local I would say I make every day one or two. Long-distance calls, depends on the health condition of my mother, who is rather sick in Los Angeles, so I call sometimes once a week, sometimes twice a week, so I would say maximum of three-long distance calls a week.

Q Have you ever been in any other institution, state or federal, where you had as much access to the telephones as you have at MCC?

A For local calls, yes, while I was in the Tomns. Long-distance calls there you had to apply for. No, I don't think there is any other institution I know of where you had frequency of telephone calls as you have here.

Q Referring you to Petitioners' Exhibit 127, which was the BP-9 that you filed on June 1, 1976 concerning clothing, you testified on direct examintion that the complaint that you expressed in that BP-9 was not taken care of. In fact, though, you have witnessed in the course of your stays at the MCC an improvement in the clothing situation, have you not?

A Oh, yes, yes, tremendously, yes.

Q And on this most recent visit you did get a full complement of all the clothing and articles?

A With the exception of towels and no blankets.

Q You say with the exception of towels?

A Yes, towels, I only got two towels, and no blanket.

Q Referring to Petitioners' Exhibit 129, which was the BP-9 you filed May 4, 1976 concerning mail, have you also seen an improvement in the speed with which mail is taken out or processed in since you have been at the MCC?

A Yes, there is an improvement, especially in legal mail, which is now collected two or three times every day and brought down.

Q You stated on one occasion you asked to see the library list and were shown that list. Then you haven't seen it since?

A No.

Q Have you asked to see it since?

A Yes, because I know it is there, I can ask for it. Ask the officer that is on location.

Q Have you asked the officer to show you the list since then?

A Yes.

Q Have you seen it since then?

A Yes.

Q You testified that on several occasions legal mail had been opened prior to your receiving it.

Do you have in your possession the envelopes from those letters?

A I doubt it. I throw envelopes away.

Q When did the incidents occur?

A During my stay last year between March and July.

Q Have you received any legal mail on your recent stay?

A Yes, one of the letters was actually opened I recollect, legal mail.

Q Before you received it?

A Before I received it.

Q How many pieces of legal mail totally did you receive in your most recent stay?

A Not too much, six or seven.

Q The one opened, who was it from?

A The Legal Aid Society.

Q You testified today that you observed no operator on duty last Thursday evening at 10.30?

A Yes.

Q How long did you observe the third floor control area?

A I would say 10 to 20 minutes until somebody brought me upstairs. I was sitting there.

Q Were you in the bullpen at that time?

A No, right there sitting in the R & D section.

Q You testified that after your return visit with Mr. Young on Saturday you were stripped searched?

A Yes.

Q In your entire time at the MCC had you ever been searched?

A Yes, but not after an attorney visit.

Q You mentioned that certain mail was not forwarded to you at Springfield and that those letters were ultimed to you at Springfield and that those letters were ultimately sent to you and you saw the envelopes. Do you have those envelopes in your possession?

A I think Mr. Young has one. I may have one or two, yes.

MR. SCHAFFER: No such documents have ever been turned over to respondents. We would like to request if they exist and if Mr. Young or Dr. Seiller has them that they be produced.

Q You mentioned in your objections, Dr. Seiller, to a female officer being on the floor, particularly in connection with your use of the toilet facilities.

On how many occasions have you experienced the female officer looking when you used the facility?

A One occasion was just enough. Now I closed my window a little bit which is illegal but I did it.

Q How long has the window been in that condition now?

A About three weeks, on and off.

Q Dr. Seiller, have you seen a pair of hair clippers on the floor on which you reside?

A Yes.

Q Are they available for inmate use?

A I don't know where they are but I guess they are available, yes.

Q During the time on your most recent stay that the washing machine was broken on 11 South, were inmates from 11 South permitted to cross over to 12 North to use their machine?

A The other way around, from 12 North, permitted to cross over to 11 South. Yes, with difficulties. It depends on the officer, if he has time, et cetera.

Q Did you in fact ever use the washing machine on 11 South?

A I was trying to one time but it was in use so I washed in my little hand basin.

Q Dr. Seiller, in connection with Petitioners' Exhibit 134, the commissary list on which you made certain notations, you testified that items you marked as not available and you base that information on the fact that you previously ordered those items and did not receive them?

A Yes.

Q When had you previously ordered those items?

A According to this date, one week before or two weeks before, but seeing other people get it and after I had those there was changes in prices and No price change was posted.

Q I don't understand that. I thought some

Q You testified on occasion you have seen inmates communicate with their hands?

A And officers.

Q On how many occasions have you seen that particular type of communication?

A While I was on the 7th North I saw it quite frequently because we had some agents there. There were some difficulties in communicating, for everybody, not only for the officers.

Q In the course of your stay at the MCC, Dr. Seiller, have you had your room searched?

A Yes, quite frequently.

Q Have you had property confiscated?

A No.

Q In your experience at the MCC, Dr. Seiller, have you generally found that cleaning materials on the units were available?

A Yes, they are.

Q In your observation, would you say that the common areas are generally kept clean?

A Yes, in general, I would say.

Q In your experience at the MCC have you found that personal hygeine materials are ususally in supply?

A Yes, they are usually available.

**ALBERT LOPEZ VICTORY**, called as a witness by the petitioners, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MUSHLIN:

Q Mr. Victory, have you ever been convicted of a crime?

A Yes.

Q Could you describe those convictions?

A When I was 16 I was convicted of robbery in the first degree, mugging, New York State. I received five years.

And I was then convicted again in 1970 for felony murder of a police officer, from which I am guilty and appealing ever since.

I have two other convictions for possession of a pistol and one for simple assault.

Q Are you serving a sentence now?

A Yes, 25 years to life, New York State.

Q Have you ever been an inmate at the MCC?

A I was from November 27, I believe 1975 until December 27, 1976.

And then from February 1st to the present.

Q In what connection were you an inmate at the

MCC from November 1975 to 1976?

A I was a State prisoner brought over by a writ and held as a pretrial detainee.

Q Were you held for a pending State or Federal charge?

A Pending Federal charge.

Q In connection with your stay at the MCC now, what is the purpose of that stay?

A I am there as a witness for the Wolfish case I believe, which is why I am here now.

Q Can you describe where you have been housed at the MCC?

A Well, when I first arrived at the MCC in November 1975, I was housed on the seventh floor South, approximately two months.

I was then asked to move to the dormitory pursuant to a new order they came down with where they wanted the writ people on 11 South.

I explained that I was a pro se litigant on trial with a very serious case coming up and I had boxes and boxes of legal material and was involved also with preparing a Federal habeas corpus on a State case and that I needed a private cell.

I was then given a private cell and I believe

Judge Frankel helped me receive a private cell.

Q Where else have you been housed?

A I was then put on 11 North and I stayed there except for a couple of times I was in segregation, until December 27, 1976.

Q Where are you currently houses?

A Currently in 11 North. I was housed when I came back on February 1st, housed in the dormitory section approximately three days, the first to February 4th.

Q Have you ever been housed in the balcony area?

A When I first arrived at 7 South they put me on the balcony for approximately a week, five days.

I got out of there quickly, four or five days I was On the balcony.

MR. MUSHLIN: Your Honor, if we were to ask Mr. Victory about the common areas and the unit conditions and the visiting conditions and the rooms for family and about conditions for attorney visits, about the denial of conjugal visits, inadequacy of the recreation system at the MCC, searches both of individuals and rooms, rectal and strip searches after visits, the limitations On pages and personal property at the MCC, he would describe

Q Let me ask you first, is that the conditions under which you have been confined at MCC?

A On the modular unit, yes, I have been living in.

Q Okay. Mr. Victory, would you describe the effect of those conditions?

MR. YOUNG: Your Honor, can I make an interruption for a moment?

Your Honor has ruled that our fact witnesses should not be present when other fact witnesses are testifying. One of our expert witnesses is present today and I wanted to find out whether your Honor's rule applies to that expert witness also or whether he is permitted to hear the inmate testify.

MR. SCHAFFER: Your Honor, we have no objection to that.

A When I first arrived at MCC I says to myself, "What a beautiful place for prisoners." It was real nice. And I says, you know, I'm lucky I'm down here compared to what I know from the physical place that I seen people come from, Green Haven. After about two weeks I started finding myself seeing things in a different light sort of. The MCC is pretty, rugs and TV's and ping-pong tables. And I think the effect --well, the effect on me was that I stopped functioning on some levels. I stopped functioning on what I believed to be -- maybe I am using words maybe that don't fit the answer, but I think I somehow started functioning on a sublevel like. I started like everything was unreal, and in fact when I was supposed to go to trial on a conspiracy case I didn't even know I was going to trial until two weeks prior. I was sleeping on the whole case until two weeks prior because it was like so unreal. You just get a feeling of everything not really being -- you feel like you are on a space ship and all those windows are TV screens, just, you know, to keep you -- well, that's sort of the feeling I got.

Q Mr. Victory, while you were an inmate at the MCC from November, '75 to December, '76 did you ever have occasion to undertake legal research?

A I had a lot of occasions.

Q Could you describe what the legal proble ms that you had were that required research?

A Well, I had a state conviction, like I pointed out earlier, and I asked for books with state law in it. There is absolutely not one book in all of MCC, even the barrest penal law. They don't even have a copy of the New York State Penal Law in that law library there. I couldn't get any state books at all, any state cases. I asked them to Shepardize Wilton vs. Mullaney, which is a case -- I Shepardized, and I asked because I couldn't go to the law library myself, I asked that the law librarians do some research and see if there is any recent cases interpreting this Mullaney case I just mentioned.

Q Let me ask you, why did you have need to Shepardize the Mullaney case?

A I was -- while I was down here I prepared a motion for reargument to the New York Court of Appeals in light of the new ruling in this Mullaney case that I mentioned, and I asked them to reconsider a prior decision that they had made in my case. So I had to prepare that motion. And then I had to prepare a federal heabeas corpus which is pending right now before Judge Ward, I believe, in this court somewhere.

Q What happened when you requested that that case be Shepardized?

A I asked -- I mentioned that particular case, but there was many cases. They weren't permitted to do any Shepardizing, weren't permitted to give any advice. If you wanted any specific cases, you could ask for the number and they would send you the case.

I asked also, I gave them the name of a case a couple of times without numbers, and I asked them to index it and find the case for me and send it up to me, and they couodn't do that either. And these were lawyers that I understand were working in there.

Q When you say without the numbers, do you mean without the citation?

A Without the citation numbers, just as he pointed out a moment ago, he wanted the citations, they wanted the citations also.

Q What other legal problems did you have that required research?

A If you are going to do any serious work as far as preparing briefs and stuff like that, you have to sit in the law library and have to be able to go from case to case, because you lose your trend of thought when you -- you have to be able --

Q Mr. Victory, I was asking what are the legal difficulties you had and you talked about your state case and the attack on that conviction. Were there any other legal problems that you had that required research?

A I had a conspiracy charge, federal charge of conspiracy, and I had to do research on that, and I had to, you know, read some of the leading cases in the field in the area of conspiracy, and the only --

Q Excuse me. Did you have legal counsel in that case?

A I had legal -- well, I had -- yes, I had legal counsel but he was assigned as an adviser, not as my attorney who was -- who would be representing me. I was going pro se. Daniel Meyers was assigned as legal assistant, I think on some level it might be termed.

Q Have you had any training in legal research?

A Well, I have a Bachelor of Law degree from Blackstone School of Law in Chicago, and I have -- I studied a course from West Publishing Company which is a legal research course, which is in addition to my Bachelor of Law degree, and I also instructed the course at Green Haven, for legal research for West Publishing Company. The inmates were sent down from all over the State of New York and we trained them how to research and be librarians for the State of New York all over the state.

Q Were you ever employed by the State of New York?

A I was employed? Yes.

Q In the law library?

A Yes.

Q In what capacity?

A As an instructor.

Q In what facilities?

A Green Haven.

Q Now, were you able to perform the the legal research that you needed to do at the MCC?

A Only because I had a lot of good friends and people who cared. They would -- any cases -- let me just -- I am going a little too quick.

Also at the MCC I think the cases stopped at 1960, federal cases. So some cases prior to 1960 you can't get there. You have to send outside and hope somebody will get you -- get them for you and mail them in to you, which is what I have done to all the important cases.

It's impossible to do legal research there, really legal research. You might be able to give a guy a book and say, "Here, go and play with it," but as far as somebody doing any real work there, it's impossible. You can make believe but you can't do any real work there.

Q What is the procedure for legal research there?

A You send a note down and a day or two later they send you up two, three books, and then when you want, it takes two days to get the books back down, and then you can reorder, and it takes another two days; so you average about twice a week you can get books.

Q How many books at a time?

A Three at a time.

Q Is that sufficient?

A No. You need that to get one tiny area of an argument that you might be preparing.

Q You said it would be two or three days later that you would get books that you order from the library. Did you always receive book- within that time?

A When I first came here, when I first came to MCC it was up to two weeks if you got them at all. It was really -- frankly, they have improved on some level. Right now you get them a little quicker, you get them two or three days after you order

THE COURT: All right, go ahead.

Q Mr. Victory, were you ever subjected to disciplinary confinement in administrative detention at MCC?

A Yes, I was, twice -- well, three times.

Q Could you describe where the administrative detention area at the MCC is located?

A Ninth floor South.

Q Could you describe the first charge that led to you being confined in administrative detention?

A Attempted escape.

Q When was that charge made?

A I believe in February, '76.

Q Were you given a hearing on that charge before the institution Disciplinary Committee?

A Yes, I was.

Q How long were you placed in administrative detention prior to that hearing?

A Approximately 10 days.

Q Could you describe how long you were locked into your cell in administrative detention during that period of time?

A For the first five days I was locked in 24 hours a day. Then I was let out an hour a day. I was let out once or twice to take a shower.

Q For how long?

A For 15 minutes.

Q After the first five days?

A After the first five days I was given an hour's recreation.

Q When you say an hour's recreation, could you describe --

A I mean on the gallery that the cell is, on the specific, like I say, A, B or C in the unit, if I am on A -- what was I on? I think I was on -- well, I don't remember. I was in different areas. But you are permitted to stay on that catwalk, you might call it, and you can walk up and down there, sit at a table, play cards for an hour.

Q When you say the catwalk, you mean the aisle?

A Right outside, in front of the cell.

Q Were you allowed to go into the common area or into the exercise room?

A Only if the guy let you get to use the phone, then you go across to the other area and you use the phone there, but you could not circulate in the general area.

Q During the recreation period?

A Well, during whenever they let you out, yes.

Q Describe what recreation was like on that area?

A Well, it was like being in a -- you mean in the hour a day?

Q Yes.

A Well, they also have a shower there, so what I would do for that hour, I would walk up and down, because it's a little bit more of an area to move in, and you do some push-ups maybe, and might even do some calisthenics, and then I would jump in the shower for like 10 minutes, and then I would go in my cell.

Q Was there any equipment for recreation in that area during the times you were confined there?

A Not in that area, no.

Q Could you describe whether that confinement that you just described for administrative detention differed in any way from general population from confinement in general population in its effect upon you?

A The cells themselves, you mean?

Q The confinement in the conditions you just described in administrative detention, did that differ in any way in its effect upon you from confinement in the general population?

A Absolutely.

Q Could you describe it?

A Well, when you are locked into a little closet,after five days you start getting a little frustrated, no matter who you are and no matter how used to it, so it's -- it affects you. By sitting in a cell constantly 24 hours a day you get affected.

Q You stated that you were given a hearing for that first charge that led to adminisrrative detention. At that hearing were you allowed to be present when witnesses were called?

A No. In fact, there were no witnesses called. The attempted escape, you mean?

Q Yes.

A When I went finally after 10 days to this institutional disciplinary hearing, they gave me a piece of paper saying that I was charged with attempted escape. I asked them to -- I gave them a request that they tape the proceedings and that they call certain witnesses and they produce certain documents would prove absolutely, without question, that I had nothing to do with it. And I says, "But I would appreciate, before you do all this, just bring one person in here to say that I tried to escape, just bring me the one person who gave you reason to put me in that cell for 10 days that said I tried to do something to escape. Would you just produce, please, one witness here?"

And they said, "We don't have any witnesses to produce, Mr. Victory. All we have is somebody that says you might have been involved."

I said, "Would you please call that person that signed that name?"

MR. CORSI: I object, your Honor.

A And they said he said he doesn't know anything about it. That is the one witness.

THE COURT: He is describing what went on at a hearing at which he was present.

THE WITNESS: That is exactly word for word, and I am not adding anything or subtracting anything.

Okay, there were no witnesses produced wharsoever to said that I had anything to do with it, and they then says that "We'll call a couple of your witnesses in," and they called the people, the witnesses that I had given them, and they said, "We don't have to bother calling the rest. You are acquitted."

Q There was a second charge, was there not?

A I objected to the fact that I had to produce defense witnesses before they ever produced anybody whatsoever to say that I done anything wrong. I felt that I -- they should at least produce one person to say that I did something before I was required to put on a defense.

Q You mentioned that there was a second charge that led to confinement in administrative detention. Could you describe when that came about?

A I guess that -- I don't remember the exact dates. Maybe -- it came about --

Q Would it be in April of '76?

A Could be in April of '76, yes. April, May, that general area.

Q All right. Could you describe what that charge was?

A The charge was malingering or feigning an illness, was the charge.

Q Can you describe the circumstances?

A I was on the telephone talking to somebody, also a third officer present who had come and got me from the floor and brought me downstairs.

And Lieutenant Keifer asked me what occurred, and I explained to him just what I just explained, that I had been called for a visit and I tried to rush and I didn't mean -- the guy was charging me with malingering but I didn't feel I was malingering, I was rushing at all points, and I felt if he would call Mr. Swanson, Mr. Swanson could confirm that.

And he said he wasn't going to call anybody, Mr. Keifer, and said he was going to put me in segegation.

And I was a little bit amazed because I had never heard of anybody going into segregation for malingering.

Q Were you sentenced to segregation?

A Well, after he said that to me, I was then told to leave, and I walked out the door and there was the officer who wrote the report, Thomas, standing right by the door with a big grin on his face, like he knew I was just going to go into the lieutenant's office and come out, and he was the guy who brought me to segregation, the same officer who wrote me up.

Q And how long did you remain in segregation on that occasion?

Excuse me. When you say "segregation," do you mean administrative detention?

A Yes.

Q And how long did you remain in administrative detention?

A Well, I was there until they finally sent me up to 11 North about a week later. I wasn't locked up all the time. I was locked up about five days, four days of that week.

Q Were you given a hearing?

A I was given a hearing and I was acquitted. I was given a hearing, an institutional disciplinary hearing, for malingering, and after they called Swanson as a witness and everybody concerned, they found that I was not guilty.

Q Mr. Victory, have you ever had visits, visitors permanently suspended from visiting you while at MCC?

A Yes. I had Susan Black was permanently suspended from visiting me at MCC.

Q Who is Susan Black?

A She works for Daniel Myers. She is a parallel visitant. She is a very dear friend of mine.

Institution Disciplinary Committee, on March 25, 1976, at which time you were found not guilty?

A Yes. The dates you just said are correct, I believe. After I had the IDC hearing, I was acquitted and ordered sent back to 11 North.

Q So then you had two hearings within a week?

A I had one hearing, which is the UDC hearing, which consisted of Mr. Swanson coming in my cell adn telling me that he wasn't going to get involved, he was going to send the hearing to the IDC. And all he was doing was coming for a formality. He came in my cell alone. I don't know if you would call it a hearing.

Q During the time that you were on trial in front of Judge Frankel for the conspiracy case did you bring to the Court's attention the problem with respect to having Miss Black come in to assist you?

A Well, we had been going through this back and forth for the period of almost six or seven months, and we were just on the verge of a full-scale conspiracy trial in which there was 11 other or 10 other defendants, and I didn't want to burden him with what I felt to be on some level a petty problem, a petty problem only because there was people's lives at stake

I haven't seen it since I filed it, as I said it was never returned to me or never responded to -- but I felt in general that they shouldn't have what was at that point a known government informer working in the law library, because not only I but on some level every inmate had some type of a filter through him to get any type of legal material whatsoever, and I felt it was really a very bad place to have what was a government informer. It is the most sensitive area in the whole institution as far as prisoners are concerned.

Q Do you recall having your deposition taken on February 9, 1977 in this case?

A I do.

Q And do you recall giving the following answer, page 59, line 20:

"I sent a BP-9 when it was in the newspapers that he had testified against some individuals for the government. I sent a BP-9 to the warden here requesting he be removed from that job because I felt it was a sensitive area for an informer to be working in, especially being he had to do my research, with the system that you have here. I in some level have to discuss my case or some aspects of my

AFTERNOON SESSION

(2:30 p.m.)

JOSEPH DANTO, called as a witness by petitioners, beig first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q Dr. Danto, what is your occupation?

A An audiologist.

Q And can you describe briefly for the Court your educational background?

A I have a Ph.D. in audiology from the City University of New York. I have a certificate of clinical competence from the American Speech and Hearing Association.

Q Do you also have a master's degree?

A I have a master's degree in audiology from Brooklyn College and a bachelor's degree in speech and hearing from Brooklyn College and an associate's degree in chemistry.

Q Do you have any training in acoustics or psychoacoustics?

A I do have some training in these areas as part of my doctorate in audiology.

A In the late morning, approximately 10 o'clock.

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Q Do you recall approximately how many hours you spent there?

A I think about two hours.

Q What was the purpose of your visit there?

A The Legal Aid Society requested that we take a survey of the noise levels present in the institution.

Q Do you recall the areas of the jail where you visited on that occasion?

A I visited two general areas, one being the dormitory areas and the other being visitors lounges.

Q Did you visit any floors other than the dormitory floor?

Why don't you state the numbers of the floor so the Court will know being familiar with the areas having taken a tour.

A The elventh floor commons and dormitory.

The ninth and seventh floor commons area.

We then visited the ninth floor and the fifth floor visitors lounges.

Q Could you tell me what functions you performed there?

A We had taken two instruments, two sets of instruments along for the survey. One was a precision

A Anywhere from 30 to 50 occasions, I believe.

Q Mr. Chase, would you describe the process from the time that you enter the Metropolitan Correctional Center until you are presented with the client you are coming there to meet?

A Yes. Upon your entry at the first floor at 150 Park Row there is a well arrangement in which a correctional officer stands. You go to him. You attempt to gain forms for an attorney visit, which are differnetiated from forms for other types of visitors.

When you finally get your hands on those forms, you fill them out by indicating who you are, what, I believe, is the address and phone number of your office, and the name of the inmate to be visited.

The forms can only be used on a one-to-one basis. You cannot put down more than one person on one form. Frequently I have to visit more than one person at the MCC, unfortunately.

After filling out that information the officer at the well to whom I would return has to record the man's location and there is a Xeroxed list usuallywith the names of the residents at that time and their numbers. There is two different sets of information that has to be put on that form.

After the officer in the well has dealt with the visitor's -- the attorney visit form, you usually have to wait for that to happen, and then a further wait is incurred until they can search you, make you now go through a metal detection device, and you are then also frisked by way of an electronic device after you go in the large arch, go through it, ones similar to airports itself.

Your briefcase, if you are carrying one, or any paper with you, are also looked through, and after the search process is completed or coterminous with that procedure you are given -- you are stamped, that is, a stamp is applied to your hand which will be revealed underneath a blue or fluorescent light, I assume.

You are then told to wait until an elevator is made available for you to go to the floor which you hope to visit.

After a period of time, which is in my experience usually at least five minutes and sometimes 15 minutes, you get on an elevator. In the meantime, of course, I should state that to achieve all of the steps which I have already described there is almost always a period of ten minutes and frequently a period of 20 minutes, and sometimes far worse.

(Continued on next page.)

T6 pm

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There are times when everybody is held on the ground floor and not even permitted to go up on the elevator. Frequently the excuse for that is is that there is a problem with the count. In my experience --

Q Has a staff officer stated that?

A Yes, when he is asked by me or another attorney or by a non-attorney visitor that is frequently the reason given in my experience.

Also, I should add that I have seen no more than two officers dealing with visitors during the hours and I might add that I always go at 4.30 or afterwards for the attorney visiting hours and in my experience it is usually one officer who had to both take care of the visiting forms and do the search procedures, on occasion accompanied by another. I have never seen three.

Q Does the officer have any responsibility other than the attorneys who are coming to visit?

A Yes, all visitors have to go through this procedure which I have described, they just file a differentform.

Q My question was does the same officer deal with the other visitors you are talking about?

A Yes, sir.

To continue, you finally get on the elevator.

Most of my visits with male prisoners, for the attorney visit would e directed to the eleventh floor.

You emerge on the eleventh floor, the doors must be opened for you by an officer in the eleventh floor visiting quarters. When you get in there you then present that officer with the forms which have been processed on the first floor, naming th man you wish to see, the number and the location.

Also at that time your hand where it has been stamped is checked second time.

Another wait ensues while the officer on the eleventh floor makes telephone calls to alert those within that the particular man you wish to see or men should be brought to the eleventh floor visiting room.

Finally, whenever that person emerges into the visiting quarters you can have a visit with him.

Q Approximately how long a time, averating out the visits that you described, approximately how long does it take from the time you enter the front door of the Metropolitan Correctional Center until you are confronted with your inmate client, on an average?

A I would say a half hour.

Q That is average? What do you estimate would be the longest period of time that you have had to wait?

A Over an hour on more than one occasion.

Q Would you describe the room or conditions in the room in which you conduct your attorney visit?

A I would say the rooms are low ceilinged, lower or approximately the height of the ceiling in this courtroom.

There are hard plastic chairs available; I think there is one sofa with plastic covered cushions in either room.

There are two rooms available for interviewing rooms and there is a room where there is an officer at the desk and that is the officer to whom you give the form and who looks at your hand.

On either side, to the left and right, are larger rooms, the interviewing or visiting rooms.

Q The Judge has taken a tour and observed the physical layout of the rooms but has not observed them during the attorney visit.

Could you describe the condition of the rooms during the attorney visits?

A Well, if there are more than two or three visits going on amongst attorneys and clients, which is frequently the case, it is noisy and crowded.

And if you are by the luck of the draw, the prisoner you wish to interview comes out after the first three or four, for instance, there are other attorneys who are visiting, you may not be able to sit at a table and go over things. You may have to sit next to him on the sofa and I have had that many times.

It is a little less convenient especially when you are dealing with files and papers and it is also a problem in making yourself heard sometimes when other attorneys and clients are talking to each other, frequently animatedly.

And furthermore, when you have more than one man to visit at a time, as I have had on occasion, the other man may not have any place to sit at all and stand and wait to see you.

Q That has happened to you?

A Yes. Sometimes there are enough plastic chairs, sometimes there aren't.

Q I believe you testified a few minutes ago that after you arriving at the visiting room you wait a certain period for your inmate client to arrive?

A Always.

Q During that waiting period can you hear the conversations of other attorneys in that room?

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COLUMBUS HOPPER, called as a witness by the petitioners, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MUSHLIN:

Q Dr. Hopper, what is your occupation?

A I am professor of sociology at the University of Mississippi.

Q What is your educational background?

A I have a Bachelor of Arts degree in sociology from Furman University in South Carolina.

I have a Master of Arts degree in sociology and anthropology from the University of North Carolina and a PhD degree in criminology from Forest State University and have also done graduate work in the University of Chicago in 1959 and 1960.

Q What faculty appointments have you held?

A I have been an assistant professor of sociology at University of Mississippi from 1957 through 1963.

I was associate professor of sociology at Southeastern Missouri State University in 1964 and returned to the University of Mississippi as associate professor in 1965, a full professor there in 1968.

I was visiting professor at Vanderbilt University

ars

factor?

A Yes. In a general way I think that the longer one stays in confinement, the longer one is separated, that the deterioration logically, and I think recent indication also, that longer periods of separation, the greater the degree of deterioration.

Whether there is an initial trauma which may compensate for something like that, shock probation, for example research in that area indicates that the first few days of incarceration and so on have a traumatic influence on people.

But I think the research clearly indicates inmates who have been incarcerated years are more institutionalized, more prisonized, more involved in the inmate subculture than those there a relatively short time.

(Continued on next page.)

Q I believe you indicated that during the initial processing at Parchman inmates are not eligible for conjugal visits. How long does that processing take?

A It depends somewhat on the number of people who are in a group. They try to do them as rapidly as they can. Sometimes, when you have a case load -- but I would say that it varies anywhere from -- oh, I would say six days up to nine to twelve days.

If a person also during this period of time is found to have a communicagle disease or in need of some medical attention which requires hospitalization, it may be logner than that.

Q I believe you indicated that outside of Mississippi the only state institutions of which you were aware that have conjugal visiting programs are California and Alaska, is that correct?

A Yes, sir.

Q And is that true of all the institutions in California or Alaska or only certain institutions?

A Alaska only has -- I was looking at the figures the other day -- 285, maybe 300 inmates. So they only have one institution.

California has about 20 institutions and it is available in all of the institutions in California. It is more operative in some than others. At Tehachapi, I've talked to the warden there, and I think he has probably one of the most extensive programs.

Q Are you familiar with approximately how many foreign countries have conjugal visiting programs?

A Yes.

Q Approximately how many?

A Conjugal visiting only?

Q Yes.

A I will classify the number in differing groups. It is a minority of countries out of the total of 260-some different cultures that one could identify with. But there's a growing trend. I would estimate right now that probably -- I'm trying to think of right now in '77 rather than '63, when I made the survey -- I would say probably 20, 20 countries allow this, conjugal visiting only.

There are others that allow conjugal visiting and furloughs, also places, six or seven countries, that allow a total family together in the correctional setting: India, Mexico, some other countries have a place where the whole family, in effect, goes to prison.

Q Dr. Hopper, would it be fair to say that among the community of correctional experts in the United States today there is still considerable difference of opinion as to the appropriateness of conjugal visits in American prisons?

A Yes, sir.

Q I believe you wrote, in your article on conjugal visits at Mississippi State Penitentiary in the Journal of Criminal Law, September, 1962, that at that time the body of opinion was quite strongly against conjugal visits among correctional experts in the United States. Would you say that the body of opinion has changed since then or is it approximately the same?

A I think it has changed somewhat. I still think the dominant, or the majority opinion is unfavorable. But in my estimation, judging from California's adoption of it, it is being considered in two or three other places that I've been in contact with, or they've been in contact with me, I think the opposition to it is decreasing.

Q But the controversy nevertheless remains?

A The controversy about this and almost any other aspect of imprisonment I think remains.

Parchman's experience doesn't necessarily mean that it could be duplicated in any other institution. I also want to say, though, that there is the possibility that it might work even better in other institutions and other places.

But there are certain features of Parchman, I think, that any institution should study and one thing is the cooperative, respectful attitude of the staff members and the inmates towards the program, also the small unit housing area.

There are several things that I think would make small group institutions -- I think, for example, at Sing Sing -- I was at that institution a few years ago when it was operated full steam as a prison, and it could operate there, but it would require -- it wouldn't operate as naturally as it would in a prison similar to Mississippi's.

Q Well, let me see if I can identify some of the factors which in your opinion have made the program at Parchman a success. I believe you have identified a number of these in your writings.

I think first you've indicated the privacy element at Parchman, and in particular the fact that these red houses were somewhat separate from the balanced by another, imprisonment under any conditions is going to be an unpleasant, painful experience.

The human qualities, the human dignities, the human rights and so on I think, even though it might make one -- as an example, I would say if you meet inmates, work them 20 hours a day, give them inadequate food, poor facilities, they may miss a good steak more than anything else and a day off and so on.

Consequently, if you give them the basic necessities of life, then the abstraction of freedom probably becomes a more severe pain.

But it is something I think that in my opinion I would say that giving them -- I would look upon family relationships, sexual relationships as a part of family relationships, as being something which is a cost you are willing to pay, even though it might make them miss liberty a little more, it is the same thing with medical care, food, shelter and clothing. It might take away the primitive pain --

Q Let me ask you one last question relating to that. Is your hypothesis then that by granting conjugal visits and satisfying that need, it may not decrease the overall pain of imprisonment since other deprivations will then be felt more strongly?

Is that correct?

A That is correct. It will not make prison a place --

THE COURT: Okay.

MR. SCHAFFER: Thank you very much. Nothing further[illegible]

MR. [illegible]USHLIN: No questions.

THE COURT: Thank you very much, doctor. I am sorry to be discouraging, doctor, but really I think this is one you are going to have to sell to the legislature, and I probably wish you luck in that.

THE WITNESS: Well, your Honor, I'm not here as an advocate. I'm here as a person who is interested in this problem.

THE COURT: I appreciate what you told us.

THE WITNESS: So I'm not betting on the outcome.

THE COURT: All right.

(Witness excused.)

THE COURT: Go ahead.

MR. MUSHLIN: Judy Wilson is our next witness, your Honor.

THE COURT: We are going to stop at about 12:20 gentlemen.

T4B am jgs

JUDY WILSON, called as a witness by the petititioners, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MUSHLIN:

Q Mrs. Wilson, what is your occupation?

A Currently I am the Director of the Newark Supplemental Program for Women, Infants and Children. I am also the Public Health Nutritionist for the City of Newark.

Q What is your educational background and training?

A I have a Bachelor's degree in food and nutrition and a Master's degree in public health nutrition.

Q And where did you obtain those degrees?

A The Bachelor's degree from Tuskegee Institute. My Master's of Public Health degree I got from the University of Michigan and Tuskegee Institute.

Q As Director of the W.I.C. supplemental food program, can you describe how large the staff is under your supervision?

A I am directly responsible for supervision of approximately 45 staff members, as well as supervising those facilities with whom we have contractual relationships.

Q What is the size of the budget that you manage?

A Approximately 2.5 million annually.

Q Now, have you ever served as a Government consultant in the field of nutrition?

A Yes. I'm currently consulting nutritionist with the United States Department of Justice. Recently I testified in the Adams and United States versus Mathis case in Alabama, and I'm also working with the Civil Rights Division now in the Forest Haven case.

Q What case is that? What does that involve?

A That involves a mental institution outside Washington.

Q Have you had any experience in [illegible]luation of food programs in prisons andjails?

A Yes. As I indicated, I did evaluate nine jails in Alabama. Currently I'm also working with NAACP, who is suing the Reedsville facility in Georgia, as well as Rikers Island.

Q Are you a member of any professional organizations?

A Yes. Do you want me to list them?

Q Yes.

A Yes. I am a registered dietician of the American Dietetic Association.

I am a member of the American Public Health Association, its scientific and nutritional education committee, the New Jersey State Nutrition Council, Essex County Nutrition Council, Home Economists in Greater Newark, New Jersey W.I.C. Advocates.

Q Have you read and are you familiar with the literature in the field of nutrition?

A Yes.

Q And have you written or published any articles in this field?

A I have written a number of professional papers.

MR. MUSHLIN: Your Honor, I would like to introduce the curriculum vitae of Mrs. Wilson as Exhibit 149.

MR. CORSI: No objection.

(Petitioners' Exhibit 149 was received in evidence.)

Q Mrs. Wilson, have you ever visited the Metropolitan Correctional Center in New York City?

A Yes. I toured the facility on March 5 of this year.

Q How long were you in the facility?

A We arrived at approximately 11 o'clock and we left approximately five.

Q And what areas of the facility did you visit?

A We visited the food pantries on 7 North, 5 South and 11 South, as well as the main kitchen.

Q Did you observe the service of any meal at the MCC?

A Yes, I did.

Q Which meal?

A I observed the service of the brunch meal.

Q On what floor?

A That was 7 North.

Q Did you observe the preparation of the meal?

A Foods were being prepared in the kitchen when we arrived.

Q And which meal did you see being prepared?

A They were preparing the dinner meal for Sunday, and we also observed the preparation stage, some preparation stage, of the dinner meal that was served on Saturday.

Q Did you also observe the storeroom area?

A Yes, I did.

ment at least recognizes the importance of those factors I have just enumerated in menu planning and of course it would be my recommendation that those procedures outlined on menu planning be adhered to at the MCC.

Q Did you reach an opinion one way or the other whether the menu planning was adequate for persons who had religious principles which required a certain diet.

A My observation was that kosher meals were provided to persons of the Jewish faith. But in terms of black Muslims the pork items were simply excluded from the tray and no substitutions were provided to replace the missing pork items.

In my opinion a substitute should be provided if it is acceptable to the Muslim inmates on days where pork is served, either directly or indirectly as a component of the food.

Then it would be my recommendation that they be offered the kosher meal.

Q Did you have an opportunity to observe the frequency with which pork appears on the MCC menu and diet?

A Pork appeared approximately twice per week as a main entry at the evening meal. However, it appeared more frequently as a component of the breakfast meal as bacon and some other pork item.

Q Do you have an opinion as to whether or not Muslim inmates who won't through religious principles eat pork and remove it from his portion, do you have an opinion whether or not that inmate would receive a nutritionally adequate diet at the MCC?

A My analysis indicated that the inmates would not receive an adequate amount of thiamin which is a B vitamin which is found in pork in a relatively high degree, so that some substitution should be provided to make up for this loss of nutrient.

Q Mrs. Wilson, do you have an opinion or did you reach an opinion as to the adequacy of the food preparation and distribution process at the MCC?

A The preparation techniques used at the MCC is one of cooking food in advance and storing it in the refrigerator then serving it up, before sent to the floors on plates and trays, whereby once it got to the floors, the floor was reheated in microwave ovens.

Q Have you ever observed such a process prior to that at any institution?

A Well, of course, airlines use this procedure.

I think the major difference here is that they have the degree of sophistication necessary to do it.

In my opinion, the manner in which the food was handled at the MCC represents a hazard in terms of the use of this procedure.

Additionally, the manner in which the food is handled because of this procedure would, in my opinion, result in increasing nutrient losses and also affect the palatbility of the foods.

Q Could you describe in what way this method presents a health hazard?

A In my observation at the MCC on the 5th, the food was cooked the day before, held to cool, put into the refrigerator unit uncovered; taken out the following morning and sliced, returned to the refrigerator uncovered; taken out approximately one hour before service time, during which time they were uncovered and held at room temperatures.

Now, temperatures between 40 and 50 to 100 degrees Fahrenheit are optimum temperatures for bacteria growth. The degree to which the food was handled and I did not see the use of gloves at the MCC until the very end of the food service, and the degree to which these foods were exposed to unsanitary conditions would,

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AFTERNOON SESSION

(2.00 p.m.)

JUDY WILSON, resumed.

DIRECT EXAMINATION (Continued)

BY MR. MUSHLIN:

Q Mrs. Wilson, did you reach an opinion as to whether or not the method of food preparation at the MCC, preparing food a day in advance, refrigerating it and reheating it on the floor, is an acceptable method of food preparation?

A As indicated previously, I don't feel that the manner in which food is handled at MCC is acceptable, based on the manner in which food is stored, the number of times that it is handled and the manner in which it is left in a warm room area for periods of an hour or more.

I feel this does not contribute to good sanitation and food handling procedures as well as the nutritional quality of the food.

Q Are there feasible alternatives for the preparation of food at an institution such as the MCC?

A At MCC I think there are adequate facilities. I think that the potential is there for preparing food the same day in which it is to be served.

I think that this procedure would be much more were very dirty, contained water and other debris as well as food particles which is an ideal breathing place for bacteria and flies and other insects.

In terms of storage units, I looked both in the freezer units and in the two refrigeration units.

The freezer unit was literally packed with food. It was very difficult for me to get -- I could not get to the back of the refrigerator since there was no aisle. Food was stacked very close to the ceiling which did not facilitate circulation of air in the freezer unit.

Also, large volumes of food were unwrapped, beef, patties of meat boxes, sausage and beans and these items had already been severely freezer burned.

In the refrigerator units --

Q Let me stop you. What do you mean by freezer burn, what is the term?

A It is a condition that evolves when food is left improperly wrapped or unwrapped In a freezer unit and it affects taste severely in terms of quality.

In the refrigeration units it was a similar story, they were not very clean, debris was on the floors, food was uncovered in the refrigerators.

Food was stored directly on the floors in the ars refrigerator and this applies to both of the refrigeration units.

In the storage unit it was the same condition, the storage rooms had large puddles of water on it indicating that it was not properly drained.

Food items were stored directly on the floor and in the storage units, they were very poorly organized. Food was not necessarily identifiable and it did not seem apparent that there was a method of rotating food to insure that the older foods that were delivered were prepared before the newer foods, due to the total disorganization of the storage units.

Q Did you notice the dress of the employees in the kitchen and the people working in food preparation?

Did you reach a conclusion as to whether or not they were adequately attired for sanitation purposes?

A Yes. While the responses to interrogatories indicated that all inmates involved in food preparation and service would wear hats, gloves and aprons, this was not the case.

As a matter of fact, hats and gloves were not brought out for use until food service time and were not available during preparation time.

Further stipulations that inmates with very long hair or hair considered to be very long by whatever standards should be given a hairnet and there were inmates in the food service that did have shoulder length hair, that is considered very long, and did not wear any type of hair covering at all through the preparation time. That was not done.

Even when the hats were brought out inmates, some inmates, did not wear them.

Q Did you draw any conclusion as to the adequacy of the sanitation in the food service areas of the floors?

A Similar conclusions and observations were made as pertains to the food areas on the floors. Hats and gloves were not worn, aprons were not worn and smoking was permitted, at least was done in the kitchen while food was being served.

Ashes were placed in the food carts that still contained food to be served to inmates. Handwashing supplies were not available in the food service areas, specifically soap and hand towels just were not there.

This was observed both on 11 North and 5 South.

Also, enclosed shoes were not worn, inmates were wearing sandals and, of course,that has a safety implication as well.

Q Based on the findings that you just described, do you have an opinion as to whether there are any dangers posed by these observations?

A There are several very real dangers of both food contamination in terms of bacteria and contamination and there is an opportunity to bacteria to grow to such a level as to present a health problem to inmates.

I noted additionally that foods were sent from the main kitchen in uncovered containers.

Specifically the carts of raisin and carrot salad and this contains a hazardous substance, the mayonnaise which is very suitable for bacteria growth and this could have happened since the carts of raisin and carrot salad were never refrigerated.

We arrived in the food service area, the kitchen area at aroujnd one, two o'clock as I recall and, at that time, about one hour after that, the raisin and carrot salad was prepared and left out in the kitchen area which was very warm for the duration of our visit and also carted up to the floors uncovered where it can be further contaminated.

My observation was that this takes anywhere ars from a half hour to 45 minutes to complete the service to inmates so this food could have been left out for a maximum of three or four hours which would have been adequate for a tremendous bacteria growth.

In terms of preparation I would like to point out too that carrot and raisin salad was very unappetizing and speaking to the food supervisor that day, he admitted that he had not given adequate instructions to the inmates that prepared that particular food and further admitted -hat the carrot and raisin salad would probably not be consumed by the inmates.

(Continued on next page.)

Q Concerning the civilian staff in food preparation at the MCC, do you have an opinion as to whether there is an adequate number of staff for a program such as that?

A My understanding was that currently there are five food service supervisors, and of course the administrator and an assistant administrator.

In the main kitchen area there are approximately 35 inmates who are assigned to food service. This does not appear to me to be adequate for proper supervision of this large, untrained staff.

On the floors, of course, additional inmates were available for serving the foods to inmates, and this represents a real concern to me where inmates are in supervisory capacities and are in a position really to deny food to other inmates.

I would strongly recommend that a member of the food service staff be available to check and monitor the food-serving procedures on the floors during this process to insure not only that every inmate gets food but also that procedures are adhered to and this was not the case on the day that I visited the MCC.

In terms of inmate staff --

A Yes.

Q Are you familiar with the characteristics of microwave ovens?

A I don't consider myself an expert on them.

Q Do any of the facilities over which you are charged use microwave ovens?

A No. But I do use a microwave oven in my services, in my current capacity.

Q Where do you use a microwave oven?

A The microwave oven is used for food demonstration purposes.

Q Beyond this demonstration purpose, have you had occasion to use microwave ovens?

A Yes, on a personal basis.

Q Do you have one at home?

A Yes.

Q Isn't it true that placement of food on the plate will overcome any heating problems of the food that may be caused by the different densities of the food items?

A This is not true, as far as I've been able to ascertain.

Q Have you had any training with respect to microwave ovens, the use of microwave ovens?

A No. However, I did recently speak to people at United Airlines and also at Marriott, who is a major caterer for the airlines, which, as you probably know, do utilize microwave ovens in reheating food, and I was able to determine that the amount -- the variety of foods offered to passengers is immensely limited due to the factors of the density of various food items.

Q But you have never taken any courses --

A No.

Q -- in dealing with microwave ovens?

A No. Microwave ovens is a relatively new phenomenon.

Q Have you heard of the concept of hard-to-heat foods as opposed to easy-to-heat foods and where the hard-to-heat foods should be placed on the plate in comparison to the easy-to-heat foods?

A Depending on the relative density, yes.

Q And what is your understanding of the way that should occur?

A Again, I don't consider myself an expert in microwave oven techniques and procecures, and I will continue to emphasize, from what I have been able to ascertain through my investigations, the density of the foods is still a major consideration in the items that are offered when microwave ovens are utilized.

Q You had indicated that it was your understanding that for the Muslims at MCC pork is taken out of the meal for them and that there are no substitutes.

Did you observe any meals for Muslims in your tour?

A Yes, I did.

Q And approximately how many meals did you observe?

A Well, I was able to observe the service of food at 11 North, and approximately half of the men had already received their meals when we arrived. There were -- the census was 45, so half of 45, say 22. And I did see that the pork items were excluded from those meals.

Q Approximately how many were there?

A That were excluded?

Q Yes.

A That I saw, it must have been 10.

Q Were there larger portions of one of the other items in the menu?

A No.

Q Did you make any inquiries to food service personnel, not the inmates up on the floor but the food personnel down in the kitchen --

A About that?

Q As to the Muslim meals, yes.

A Yes, I did, and he concurred with my findings. He indicated that this was the procedure: that the pork items were excluded.

I asked him about the provision of substitutes and he indicated that this was not done.

Q Did he discuss with you whether other items, the nonpork items, would be increased, portions for the Muslims?

A Again, I did observe the -- no, he did not discuss that.

If I might interject something here, serving extra amounts of other foods would not necessarily compensate for the nutrient losses.

Q But it might very well?

A Highly unlikely.

Q It would depend upon what items were increased, is that right?

A That's correct.

Q Is it an acceptable practice to cook meals in advance, cover the meals or various items in the meal and then store it in a refrigerator until actual serving and consumption by the recipient?

A If the proper procedures are used, this is an acceptable preparation method.

Q Cook, cover, place in a refrigerator.

A Yes.

Q Approximately what time did you get down to the kitchen area down in the basement?

A Slightly before 2.

Q And at what stage of the food preparation were the individuals down there?

A When we arrived in the kitchen, people were obviously on their break. Nothing was being done. So that we had an opportunity to talk with the food service administrator and we engaged in a conversation with him for maybe an hour or so.

Q How long did you remain in the kitchen area?

A Until 5.

Q You were down there for about three hours?

A Yes.

Q Where did you have the discussions with the food service supervisor?

A In his office, which is adjacent to the food preparation area. There is a glass window there, he did have occasion to leave the area to go out and give verbal instructions. We made it very clear to him that our conversations with him should not cause him to neglect his duties and responsibilities.

Therefore he did frequently leave the area to go out and give verbal instructions, because inmates were constantly coming to the window, summoning him, and during that time we spoke to the warden while he was out or we would just sit there and view materials.

Q Mrs. Wilson, at page 10 of your report you indicated, in discussing the kitchen area, paragraph 19, that "our presence could have contributed to this" -- the "this" being that the inmates were not diligent in carrying out their job. What did you mean by that?

A Well, some of the inmates were interested in speaking with us, and of course I certainly recognized that any time you have people into a facility, be it a food service facility or any operation that is providing-- where work is being done, this tends to interfere with that work to a certain degree.

Q When you were down in the kitchen area, were you identified to the inmates?

A Yes, we were.

Q And who accompanied you?

A Captain Bergen.

Q Who else was with you?

A Mr. Mushlin and Mrs. Clark.

Q And were you identified as being connected with this case?

A We were identified as nutritionists who were inspecting the area. I do not recall whether we were physically identified as being involved in the case.

Q But Mr. Mushlin was with you?

A Yes, he was.

Q And your best recollection is that you only spoke with the food supervisor for about an hour?

A Well, as I said, I didn't time each component of our visit.

Q When you finished down in the kitchen, where did you go after that?

A We left.

Q You left.

A Yes.

Q So that for the three hours you were in the kitchen?

A We were in the kitchen.

Q And most of the time you engaged in conversation with Mr. Nuerenberg?

A No. Most of the time was involved with actually inspection and observation of procedures that were being used.

Q When you went to the storage areas and the refrigerators and freezers --

A Captain Bergen accompanied me.

Q -- where was Mr. Nuerenberg?

A He was in the kitchen carrying out his duties and responsibilities.

Q You indicated in your direct that by cooking the food in advance and then storing it and then serving it later on there would nutrient loss because there would have to be reheating on the floor, there would be a longer cooking time, and that also that peak flavor is captured if it is served right after it is cooked, is that correct?

Isn't it true that these characteristics or losses of these characteristics do not occur when you cook foods in microwave ovens?

A Not necessarily. If you are precooking, if you are cooking the food to a certain degree of doneness, then that certainly has an effect on that because the microwave oven is going to complete the cooking process.

My observations were that the foods were completely cooked, not cooked to a certain degree of doneness, giving consideration to the fact that the microwave oven would complete the process.

Q Isn't it true that you will not get a nutrient loss if it is already cooked, completely cooked, and then you just reheat it in a microwave oven?

A My comments relative to nutrient losses were not only with the procedure but with the technique used at MCC.

Q Let's assume, though, that what we have is the meal is cooked, it is covered, it is stored, and then at some subsequent time it is brought out for plating and brought up to the floor and then it is heated, but it is already thoroughly cooked.

Isn't it true that there would be no nutrient loss from that?

A In my opinion, the reheating is going to cause more losses than would normally be the case if the foods were cooked and served immediately. So that the reheating would cause additional losses.

Q Isn't it true that under the system that

A Yes, but not to the extent that they are used at the MCC.

Q But they are used as cooks?

A As cook helpers also.

Q Mrs. Wilson, isn't it true that the only conclusion you can draw from your plate waste study is with respect to potatoes?

A Yes, that would be true. However, potatoes are frequently served at the MCC.

Q But you only observed the potatoes in that one instance?

A That is correct.

Q What conclusion did you reach with respect to the nutrition requirement for men at MCC?

A As I indicated previously, the fact there was such wide disparity in the portion served at MCC and the manner in which foods were prepared, I feel that it is highly unlikely that the dietary needs are being met at the MCC.

While the nutritional analysis that I completed did indicate that all of the nutrients as required by the National Research Council are being presented in such amounts, I think it is important to remember that in doing that analysis I assumed, umm,

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**JENNINGS R. NORMAN**, called as a witness by the petitioners, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q Mr. Norman, are you currently on the staff at the MCC?

A Yes, sir.

Q How long have you worked at that institution?

A Since it opened up in August of 1975 over here.

Q What is your position there?

A Senior officer specialist.

Q Could you identify the units that you worked in since you began working at the MCC?

A I have worked all units except the third floor.

I have worked relief on that on a temporary basis for maybe an hour, an hour and a half at t time.

Q You are currently working in which unit?

A Working on 11 North.

Q What hours do you work there?

A From three until eleven at night.

Q What days do you have off?

ars for inmates visits.

And then we make a four o'clock count and then we start the four o'clock evening meal after the count is cleared.

And we have the attorney visits on weekdays starting around 4.30.

Q What are your duties relating to those visits?

A Which specific duties?

Q Attorney visits? What do you have to do in connection with those?

A While I am supervising the evening meal I have to accept the inmates brought in from other floors and process them through the search room and escort them to the visiting room between 4, 4.30 and 6.30.

Q Will you explain to the Court in connection with that, is your floor the only floor other than the fifth floor that has visiting during that period?

A Yes, it is.

Q Do inmates from other floors who have attorney visits have those visits in your visiting room?

A Yes.

Q Are your responsible for supervising the processing of those people as well as the people from your own unit?

Q Will you describe for the Court what some of those problems are or difficulties are?

A Well, for example, the food service brings up the food carts and I am supposed to assure that each individual gets a fair portion of the food.

But meantime the attorney visits start so I have to leave the kitchen area, to go around and escort these prisoners all the way around to the other side of the unit, take them into the search room.

I generally give them a simple frisk and put them into the attorneys visit and then I give them a strip search coming out from the attorney visit.

This takes me away from my duties as supervising the evening meal and consequently lots of time I come up short on plates that have been stolen by others and plates going out and coming back for double rations or just in general strongarming and taking advantage of weaker inmates that are not capable of protecting themselves.

MR. SCHAFFER: Objection and move to strike it. He wouldn't have personal knowledge of that.

Q Have you observed instances of that happening yourself?

A I have observed instances of that happening

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because I would count the food before it was brought in and know how many I had. I would come up short and have to order extra food.

THE COURT: But have you observed people strong-arming other people?

THE WITNESS: That is an opinion but I know it happens.

THE COURT: Well, I am sure you do but I will strike it Out.

Q Officer Norman, there is a thing called hearsay which means you can't tell about things you haven't seen yourself personally.

A All right.

Q By the way, you testified that you are the only officer during the three to eleven shift on 11 North.

Is there also an officer in 11 South unit during that same period?

A One officer.

Q One in each unit?

A Yes.

Q At eleven o'clock when you are relieved does an officer relieve each of those two officers or not?

A Negative.

Q How many others?

A At eleven o'clock 11 South takes over from 11 to 12 and at midnight another officer comes in and works both the units.

Q To the best of your knowledge there is only one officer between midnight and the next shift?

A That's right.

Q For the entire floor?

A Until 6.30 the next morning.

Q Officer Norman, you testified that you have worked virtually every unit in the institution.

Did you ever work in the dorm unit, 11 South?

A Yes.

Q During what months did you work there?

A Parts of October and November and December. I don't remember just exactly when the starting date was when that particular quarter ended but last year.

Q What portion of the date did you work there?

A The day watch from 7.45 to 4.15.

Q What were your duties during that time period or your tour of duty, was that essentially the same as the ones you described for 11 North?

A No, sir.

Q What differences were there?

A Well, usually when you went in the morning meal was served and over with by the duties entailed supervising the cleaning up of the unit and the dining room area, kitchen area where the food had been served.

And then going into each of the six units in the dorm to wake the men, get them up, make their beds, clean up the area and then supervise the sanitation detail and the multi-purpose room.

Get the garbage out of the unit, out into the sally port between the two units for the sanitation crew to take the garbage down.

And with 120 men usually in the unit all the time, you had several problems that would come up with the men.

You had to answer their questions, put them into the right channels of getting the source of information they wanted if you couldn't supply them with the information.

Q Were there any other officers assigned to 11 South during that period?

A Yes, the unit manager usually came --

Q Not talking about the unit staff but other officers like yourself?

A No.

Q You were the only officer?

and visiting.

Did you ever have to do both functions at the same time?

A Yes. That is sort of like the attorney visits, in 11 South. I have the evening meal and the attorney visits and at noontimes sometimes we couldn't be completedly finished with our noon meal and I would have to start supervising ghe regular visits for the inmates on 11 South and it was, always had more visits because it was a larger unit.

One job sort of compliments the other as it goes along with the other job.

Q In other words, approximately how many people would visit during a normal visiting period in that unit?

Let's put it this way since -- approximately how many inmates on an average would have to be taken out to the visiting room and brought back in and searched.

A 12at a time. Abd usually during the course of visiting it would be from 12 up to as high as 30 and 35 inmates would go visits during that three-hour period.

Q During that same period approximately how

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many meals were served?

A Well, generally the meal service would be over before one o'clock so it didn't overlap that long.

(Continued on next page.)

Q Whar did overlap? The clean-up period?

A The clean-up period, which I didn't get a chance to supervise.

Q Other than the problem of not gaining a chance to supervise the clean-up because of visiting, were there any other problems that were created by the fact that you were the only officer in charge of 120 men?

A Yes. It was sort of hard to walk back out into the unit and answer the questions or help them with the problem at that particular time because of trying to find other inmates for visits or checking the locator to see where they were if they didn't answer when you yelled out at the top of your voice for a certain name has a visit. It was a problem, yes.

Q All right. Officer Norman, as one of your functions concerning visits, were you responsible for conducting strip searches of inmates?

A Yes. There again I didn't --

MR. SCHAFFER: Objection, your Honor.

THE COURT: The answer is just yes, officer.

Go ahead. Next question.

Q Did you always conduct a visual rectal search as part of that strip search?

A Coming out, if I suspected something, I would. But normally I would allow them the dignity of not resorting to that on all occasions.

Q All right. On the occasions that you did conduct a visual rectal search, taking all the times that you conducted a visual rectal search while you have been employed at MCC, have you ever discovered any contraband hidden in that area of the body?

A Never.

Q Officer Norman, you testified that during your tour of duty at 11 North, 3 to 11, that there is attorney visiting. When does the attorney visiting begin?

A At approximately 4:30.

Q And does that sometimes vary? Does it always begin right at 4:30?

A No.

Q What might prevent it from beginning at that time?

A Sometimes a unit will be off on a count or maybe a man is unaccounted for and the count will be delayed. However, I must say that in the last two or three weeks that has improved and they have

MR. SCHAFFER: We discovered time and time again that witnesses have a slightly different version of what constitutes personal knowledge.

MR. YOUNG: This is a member of the MCC staff. I think he is familiar with the tours of duty.

THE COURT: If he gives something inaccurate, Mr. Schaffer, you are in a position to correct it.

Do you know about this, officer?

THE WITNESS: Yes.

THE COURT: All right. You can tell us.

Q All right. Are other officers required to work a doubleback shift?

A Yes.

Q Do you know approximately how mahy officers work that type of shift?

A Three or four, maybe.

Q Officer Norman, have you ever observed any problems among inmates over the telephone system?

A Yes.

Q What problems have you observed?

A Fights.

Q Have you observed what caused those fights, or what it was about the phone system?

A I was able to determine thae the fights started over the phone.

Q Was there any unit --

MR. SCHAFFER: Objection. It sounds like hearsay, your Honor, unless he was there when the fights started.

THE COURT: Yes.

Q Did you observe where the fights occurred?

A In the area of the phone.

Q Was there any one unit in the institution where this problem of fights was particularly prevalent?

A I don't recall, but I believe it was 11 South where it was mostly prevalent.

Q Mr. Norman, you testified that when you were on your tour of duty in 11 South the latter part of last year that you worked the day shift. Did that unit at that time have an Inmate Committee?

A As far as I know, they did.

Q And were you requested to participate on that Inmate Committee?

A No.

Q Were you assigned to participate on that mates?

A Usually, if I couldn't find someone to interpret, we would use sign language and get by the best we could.

Q You mean an inmate to interpret?

A An inmate.

Q Have you noticed whether the notices posted on the bulletin boards of the units of these non-English-speaking inmates have always been posted in the languages that they speak?

A I have noticed it. They have everything written in English with the Spanish interpretation. I haven't noticed any other language.

Q Have you noticed whether everything that is posted in English is also posted in Spanish?

A No. Everything is not posted in Spanish.

Q Officer Norman, has one of your responsibilities as a member of the MCC staff been to conduct periodic room searches?

A Yes.

Q And when you have conducted such a search, has the inmate been permitted to observe the search?

A No.

Q Have you always returned the rooms that you searched to the condition that they were in before the search?

A I always try to.

Q Have you observed whether other officers have done likewise?

A Yes.

Q Do they return the rooms to --

A Not all of them. A lot of the officers do try to put it back into shape, not all of them.

Q What about the ones who do not? What condition do they leave the rooms in?

A Well, the room looks very disrupted once they get through with the search.

Q In what fashion?

A Leaving personal property and bedding scattered over the room.

Q Have you observed a superior or a lieutenant instruct these individuals to return the room to their original condition?

A No.

Q Officer Norman, in the course of your responsibilities at MCC, have you ever observed inmates attempt to bring coins in from the visiting room?

A Yes.

Q How do they make their commissary orders then?

A They either have to find another inmate that happened to have one left over from last week, with the prices subject to have changed on it, and they copy what they want from that list and put the price on, or they will write on a plain piece of paper what they want and guess at the price, if they don't know the price, and send it down on a plain piece of bond paper or lined paper.

Q Officer Norman, I believe you testified that one of your responsibilities is to distribute supplies to the residents of your units.

A Yes.

Q And can you tell me, for example, has toilet paper always been available in sufficient quantity for the residents?

A No, sir.

Q Has there been any one particular unit where this has been a particular problem?

A It was a problem on 11 South, but on 11 North for the last month or so I haven't had any problem with the toilet paper.

Q How about prior to the last month?

A Oh, yes. Frequently in all units.

Q All right. Did you make notations in the unit log concerning the unavailability of toilet paper?

A Not all the time. But I did frequently.

Q All right. Could you tell me whether bedding supplies are always available in sufficient quantity for the residents?

A We generally have plenth of sheets. We find blankets and pillow cases hard to come by.

Q Have you ever been unable to give an inmate a blanket or a pillow case?

A A lot of times, yes, I haven't been able to give him.

Q You have laundry machines in your unit. Are those always in operable condition?

A No.

Q Could you tell me how frequently they are not in operable condition?

A Well, they are subject to go out any time and I wouldn't be able to establish a frequency, but I have seen machines go out as high as twice in one quarter or one three-month period.

Q And when they go out, how long does it take to get them repaired?

A On one occasion we were without a washing machine in one unit for about a week. In the same unit we had a problem with the dryer, we had a problem with one of the radar ovens and we just had to do without.

Q Is laundry soap always avalable in sufficient quantities?

A Of late it has been. But there have been times when we would go three or four days without the laundry powder.

Q You said "of late." During how recently?

A I would say everything has improved within he last -- within the last month.

Q All right. Are hair clippers always available to the residents in your unit?

A No, sir.

Q On what occasions are they not available?

A Well, the clippers are maintained and kept locked with the scissors in either the unit manager or the unit counselor's office, and when they go home at night or in the afternoon I have no access to those barber tools.

Q Officer Norman, are the meals always served according to schedule at the Metropolitan Correctional Center?

A Pretty close to schedule, yes. It may vary 15 to 20 minutes, 30 minutes on occasion.

Q Do you always have a sufficient number of portions for the number of inmates that are housed in your unit?

A Not all the time.

Q Can you give me any examples, when you've been missing portions, how many you've been missing?

A On numerous occasions I've been short as high as 10, 12, and at one time 18 portions But of late they have put locks on the food cars that they bring up and we are able to account for all of the food in the presence of either a food supervisor or he doesn't doubt your word that you are missing any when you call him from the sally port and tell him that you are down so many trays or so many plates, and generally we get them back up now.

Q Have you had occasion to observe the food that is brought up?

A Yes.

Q Could you tell me whether the portions are always roughly the same?

A There have been times that I have sent the whole food cart back because of the inadequate portion or the difference in the portions.

Q All right. Are utensils always available in adequate supply for the number of residents in your unit?

A Silverware, yes. We have no problem with that. Occasionally we are short cups and bowls.

Q All right. Have you observed the inmates that work in the kitchen serving the food?

A Just in the unit.

Q Yes. That's what I mean. Could you tell me whether they wear aprons? Do they wear gloves?

A No.

Q Did they wear something over their heads to cover their hair?

A No.

Q Officer Norman, have you had occasion to observe the temperature in the visiting room of your unit?

A Yes.

Q And would you describe what your observation of that temperature was?

MR. SCHAFFER: Objection.

MR. YOUNG: He testified that temperatures have been too cold on occasion. I asked him whether he observed the inmates taking any procedures because of that.

MR. SCHAFFER: Whatever procedures he may have observed, I don't think he is competent to testify why they were taken.

THE COURT: Well, if they were putting on overclothes or something, he might tell us that.

Have you seen any?

A I have observed them wrapped in blankets in the television area.

Q All right. Mr. Norman, during the recent months when you have had your tour of duty on 11 North, have any individuals been housed in the balcony area of that unit?

A Yes.

Q When was the most recent occasion that that happened?

A Last week I had six.

Q Do you happen to recall what day or what night it was?

A No, I don't. I know there was three or four nights last week I had three to six inmates. I had a high number of six for a couple of days.

Q And what sleeping accommodations were these individuals provided with?

A They were furnished an army cot.

Q All right. And has this happened on prior occasions that people have been housed in the balcony on 11 North?

A Yes.

Q Have people been housed in the balconies of other units when you've been working in other units?

A I'm sure they have, but I can't recall specific dates.

Q Would you please tell me when the bus list is posted in your unit?

First maybe you should tell us what the bus list is. I'm not sure that that's ever been clarified.

A A bus list is the listing of the individuals that are subject to move out the following day at 6 o'clock, be down, dressed and ready to leave the institution by 6 o'clock the following morning.

Q When is that list usually posted?

A The one last night came in about 9 o'clock.

Q This is in the evening?

A In the evening.

Q And it was for the people who were leaving the next morning?

A That was for the people that were leaving this morning.

Q All right.

A And I've seen it held up until 11 or after I got off duty.

Q All right. When are the inmates locked in in your unit?

A At 11 o'clock.

Q So is it your testimony that sometimes the bus list doesn't arrive until after they are locked in?

A That's right. But they are usually notified thatthey are leaving, if they've been locked in.

Q When is the court list posted?

A That varies. I've seen the court list come in generally 6, 6:30 or 7 o'clock, generally. But I've seen the court list of late not even be in the unit when I left.

Q All right. Officer Norman, when an inmate has come to you with a problem that you couldn't resolve yourself, have you ever encountered any

A Yes, sir.

Q During your entire time at MCC, have you ever observed any mice or rats?

A No, sir. I saw a fly one time.

Q You mentioned three or four individuals who had to work two shifts with only an eight-hour period separating them. Do you know how often those individuals have to do that?

A This is a three-month, a quarterly assignment, and they oduble back at least once a week and then they get a short weekend break and they get a 24-hour break in the middle of the week, which is not -- which was not, when I worked it, in accordance with the master agreement with the union.

Q Mr. Norman, when the washing machine was broken on 11 North, did you permit inmates to cross over to 11 South to use that washing machine?

A Yes, I did, when it was available.

Q Mr. Norman, how long have you worked for the Bureau of Prisons?

A It will be 15 years in July.

Q And did there come a time when you put in for a promotion?

A Yes.

Q When was that?

A On the open continuance basis, possibly four years ago. I don't know exactly when.

Q And have you received that promotion?

A No, sir.

Q And have you complained about that to the warden?

A Yes, I have.

Q And have you filed a civil service complaint concerning the lack of promotion?

A Just recently.

Q And, Mr. Norman, would you say that you were somewhat bitter about the lack of promotion?

A Yes.

MR. SCHAFFER: Thank you. I have no further questions.

THE COURT: Okay. Thank you, Mr. Norman.

(Witness excused.)

MR. YOUNG: I call Albert Duke.

ALBERT DUKE, called as a witness by the petitioners, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q Mr. Duke, are you currently confined at the Metropolitan Correctional Center?

A That's right.

Q What unit are you housed in?

A 9 South.

Q What is your religion, Mr. Duke?

A Islam.

Q Any particular sect of the Islam religion?

A No, no particular sect.

Q Did you practice the Islan religion before you were incarcerated?

A Yes, that's right.

Q What unit were you first incarcerated in at the Metropolitan Correctional Center?

A 7 North I believe it was.

Q Could you describe the meals that you were served when you were incarcerated there?

A Yes. When I first appeared in the MCC I came in and Ramadan was being observed, which we didn't eat until nightfall.

After that particular time I had a slight problem as far as getting, probably around about September 26 on until October, down on seventh floor, trying to ascertain something to eat due to the fact that I discovered that pork, that the pork-free diet was not completely pork free and also discovered that --

MR. CORSI: I object. I don't know what the basis for those observations are.

THE COURT: You can cross-examine him. He might have found some pork in something.

Q Go on, Mr. Duke.

A I don't eat pork, any type of pork.

Q Is that because of your religion?

A That is correct. I observed the law as far as eating any type of pork or pork products and certain types of particular types of food.

I also observed that the proper way to guarantee that the inmate was to receive a pork-free diet it is almost totally impossible to guarantee that.

Q Let me ask you first of all, you testified when you first arrived you didn't eat the meals?

A That is correct. I was under observation of Ramadan because I came in the MCC it was August 30.

That is the time of the year when most Moslems abstain from eating food in the daylight hours which means we can eat after nightfall.

And at the MCC the Moslems participate in their observing which they are allowed to eat at nightfall at the MCC and this went on to approximately September 26.

Q When you received food during that period were you able to eat?

A Yes. At that particular time I observed it, that is correct.

Q What food did you get say when the rest of the institution was being served a mean that included pork, what food did you receive?

A We didn't receive any food. Our food during the month of Ramadan was prepared by some Moslems down inside the kitchen but this only went up until September 26 and after September 26 I was told that I had to eat normally like the other inmates and this is when I was on observation that the food wasn't properly guaranteed to be a pork-free meal diet.

Q What do you mean by that? What is the basis of your belief on that?

A On several occasions when I went to obtain a tray there was pork on it and I instructed the officer that

We will also check. I thought Mr. Young had it.

A No, I don't. I can explain why.

Q Why don't you explain it.

THE COURT: No, don't.

Q What did Father Tolentino respond to you?

A He gave me the diet policy, says that only the Jewish religion was allowed to have a kosher meal.

Q Now, when the other inmates at the MCC were being served a meal that contained pork were you provided with something as a replacement for this pork?

A No, sir, no substitute.

Q When you obtained a meal that includes pork what do you do?

A Nothing.

Q Are there any other requirements other than the fact of not having pork served to you, any other food requirements relating to the preparation that your religion dictates?

A Yes. You can say there is a type of dictation that so long as the same guidelines that the Jewish religion have, as far as to have the proper preparing of food and the guidelines -- this is one of the acts I wrote the Warden asking him about the uniformity of treating one inmate the same as another inmate.

Also brought out to his attention that due to the fact that another inmate may have different words in his mind which I have in my mind, and that inmate requests a kosher meal, he should have an opportunity to observe or have that particular kosher meal.

Q Mr. Duke, have you ever encountered any difficulties in receiving money orders at the Metropolitan Correction Center or having them credited to your account?

A Yes, sir.

Q Would you describe the difficulties you have encountered?

A On several occasions by regular mail my brother have mailed me money orders down to the MCC --

MR. CORSI: Objection.

THE COURT: I will take it subject to connection.

A To have money mailed to the MCC and after a set period of time I became aware that I never received the money and I asked my brother to go to the Post Office to try to put a stop or a tracer on to see if that money order has ever been cashed.

I was instructed at the Post Office it would take 60 days waiting period so that I would be able to get a copy of the money order.

Q Did you eventually get a copy of the money order?

A Yes, sir.

Q Did it indicate that it had been cashed?

A Yes, sir, by the MCC.

Q How did it indicate that?

A On the back there was the stamp of the MCC and the cashier's name on the back, signed the money order.

Q What did you subsequently do with that copy of that document?

A I gave it to Mr. Matthews, the unit manager and he took it downstairs to the cashier and they searched and looked for the money and admitted a message back that they couldn't locate the money and he gave me a claim slip to fill out specifying the claim, which I did fill out and I gave it to him.

MR. YOUNG: We don't have the document he turned over to the cashier and respondents can help produce that.

What we do have is the customer's receipt for the money order and also the application for searching for the postal money order.

with it.

MR. YOUNG: We are trying to but this creates a problem --

THE COURT: I know it is a problem because there are problems with people having checks and money orders go astray.

MR. YOUNG: Nothing further.

THE COURT: Any cross-examination?

CROSS EXAMINATION

XX BY MR. CORSI:

Q Mr. Duke, you indicated that you weren't able to guarantee that you had a pork-free diet. What is the problem that you perceived?

A The problem I received was on such occasions, Mr. Neurenberg, on several occasions there was pork placed on the plate and the officer will call and ask Mr. Neurenberg to send the pork-free meal and Mr. Neurenberg would tell him just take the pork off the tray.

Q Did you hear Mr. Neurenberg say that?

A I was right at the telephone.

Q Did you observe the officer taking pork off the plate?

A No, the officer didn't take it off.

Q Were you sitting in the courtroom when Mrs. Wilson was testifying?

A Do you mean the young lady?

Q Yes.

A Yes, sir.

Q Have you ever seen Mr. Neurenberg?

A No, sir.

Q Other than that conversation you overheard was there any other reason that you perceived that you were not getting a pork-free diet?

A Yes, sir.

Q What?

A On some trays I would see there was pork grease on the tray.

Q On the tray or on your plate?

A On the plates.

Q All of the plate?

A Yes, I have seen it on quite a bit of plates.

Q What about the plate that you were to get?

A Yes, on that particular plate.

Q Did you ask for a plate with no pork on it?

A Yes.

Q What happened when you asked for it?

A There was pork on the trays.

the meal when I went back. I was not given a pork-free meal so I just left the plate downstairs.

Q Did you complain to someone?

A Yes, sir.

Q What happened when you complained?

A Nothing.

Q Did you ask for a meal to be sent up?

A Yes, sir.

Q What did they say?

A They just took my request and that was it?

MR. CORSI: I have no further questions.

MR. YOUNG: Miss Singer was here but she has a back condition and she was unable to stay for the afternoon and she would be the next witness and I am sorry.

THE COURT: All right. Thank you, Mr. Duke.

(Witness excused.)

THE COURT: I don't know where this diet business goes. Am I straight on the record that this is the only evidence on this subject and Mrs. Wilson?

MR. YOUNG: I believe that there was also testimony as to Jewish meals, Mr. Gardner testified concerning Jewish meals.

THE COURT: All I can tell you is that it is rather wispy evidence. I don't know what to do with it but I give you that for your guidance. If there is anything to the diet problem it hasn't come into very clear focus as far as I am concerned.

MR. YOUNG: We can present more Muslims who will testify as to what they encountered.

THE COURT: You can give me more Muslims but you would just as likely to have more wispy testimony.

MR. YOUNG: They can only testify as to their experience.

THE COURT: I just let you know how it looks to me because we always share our thoughts with each other and there it is.

You may be able to pull it together in your briefs at the end. I will leave that to you.

Miss Singer by the way is one more witness along the line as to what I said about Dr. Fogel except she has a better figure. She is the sort of person I have had a professional relationship with and again I don't know what her subject is for us but the same observation about her.

9.45 tomorrow, gentlemen.

(Adjourned to Wednesday, March 16, 1977, at 9.45 a.m.)

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UNITED STATES OF AMERICA
ex rel. LOUIS WOLFISH

vs.

UNITED STATES OF AMERICA,
EDWARD H. LEVI, etc.

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New York, March 16, 1977,

9:50 a.m.

Trial resumed.

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MR. YOUNG: At this time we call Lind Singer.

LINDA SINGER, called as a witness by the petitioners, being first duly sworn, testified as follows:

MR. YOUNG: Your Honor, at this time I advise the court that Miss Singer has a back injury which may necessitate that she stand up on occasion while she is giving her testimony.

THE COURT: Okay.

MR. YOUNG: We are not doing it for dramatic emphasis.

DIRECT EXAMINATION

BY MR. YOUNG:

Q Miss Singer, would you please describe your present occupation?

A I am an attorney. I'm a partner in a Washington, D.C. law firm of Goldfarb, Singer & Austern and I am the executive director of the Center for Community Justice.

Q Could you describe briefly for the court what the functions of that center are?

A The Center for Community Justice, formerly the Center for Correctional Justice, was formed in 1971. Since that time it has been active in developing, implementing and evaluating various administrative grievance procedures, primarily in prisons.

Q In your role as the director of that center, have you performed the function of consultant to any correctional groups or other organization interested in grievance procedures?

A Yes. Either I as an individual or the center as an organization has consulted directly for several state correctional systems as well as federally for the Law Enforcement Assistance Administration, the American Bar Association and/or private groups wishing to implement prison grievance procedures.

Q Could you identify some of the state correctional systems with which you have worked?

A The States of California, New York, South Carolina, Massachusetts, District of Columbia.

Q And what has your role been with those correctional systems? You stated "consultant." Would you explain in a little more detail what you did?

A Most recently we have actually gone in and, acting with the State Correctional Administration, have helped them to implement grievance procedures throughout prison systems. A little earlier, in other cases, for example, for the State of Ohio, we had been asked to come in and evaluate existing procedures for resolving grievances or for disciplining prisoners while they are in prison.

Most recently, under a contract with the National Institute of the Law Enforcement Assistance Administration, we have been asked to train officials in every state in the prison implementationof effective grievance procedures. That is going on this year.

Q And have you written any articles or supervised the publication of documents relating to grievance procedures and correctional systems?

A Yes, I have, a large number. Would you like some examples?

Q Yes. Would you describe a few?

MR. YOUNG: You are an occupational teacher, is that right?

MR. LANIGAN: That is correct.

MR. YOUNG: All right.

THE COURT: How long do your classes run?

MR. LANIGAN: From 1.30 to a quarter of four. That is about two hours and 15 minutes.

MR. SCHAFFER: Do you start the process of picking people up before 1.30?

MR. LANIGAN: Yes, usually a quarter to one.

MR. YOUNG: Because of the escort service that you perform do you have trouble starting class on time?

MR. LANIGAN: Yes.

MR. YOUNG: After class is over how long does it take you to return them to their units?

MR. LANIGAN: Only about 15 minutes which is included In the hour that I spoke of.

MR. YOUNG: Fine, that is all I wanted to note.

THE COURT: Anything else?

MR. SCHAFFER: No, sir.

(The following took place in 11 South.)

MR. YOUNG: I would like to note for the record

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that we are in the 11 South dorm area during the service of the noontime meal.

I would point out that the individual serving the salad is wearing neither a hat covering rather long hair nor gloves.

I would like to point out that individuals in the unit in the kitchen, some of them are wearing plastic gloves and had aprons and some did not have at least gloves on.

I would also note for the record that there are now three long tables in the commons area. This unit -- those tables to the best of my recollection were not here when we visited on the last tour approximately a week ago and that individuals in this unit are now being permitted to eat in the commons area.

At this time in the unit last week they were forced to eat in their dormitory area.

MR. CORSI: One thing I would like to correct. On the last tour the tables were here but not up, not at mealtime.

MR. YOUNG: How long have the tables been here, do you know?

MR. CORSI: Approximately two or three weeks.

MR. SCHAFFER: I would like to note in the pantry area I believe all of the inmates working were wearing hats and aprons and the only individual not wearing gloves was an individual who was handing out the trays to the inmates.

It appears to me that all of the individuals who were handling plates and handling food were wearing glovs.

MR. YOUNG: That is not true, the other individual may have put gloves on since I observed them because when I observed the pantry area there was more than one individual not wearing gloves.

MR. SCHAFFER: I would like to point out that I am standing approximately three feet away from the stenographer and talking in a normal tone of voice and he seems perfectly capable of hearing me and recording this statement.

THE COURT: Well, I think that that is a relevant observation. I don't know what the decibel reading would be but I think the noise level at this mealtime especially concerning this dormitory area is quite tolerable.

There are occasional noises of equipment being moved and things of that nature. My own unscientific observation is that the noise at this particular moment ars doesn't present a problem to be concerned with.

MR. YOUNG: I would also point out in that regard that there are a substantial number of people in their individual dorm units with the door closed eating their meals there. That might affect the noise levels. Also they have food in their mouths and they're not talking or engaging in other activities which might create noise.

MR. SCHAFFER: I would note that while this is going on the television is on and individual playing pool and I would estimate approximately 40 people in the commons area.

THE COURT: Do you want surrebuttal?

MR. YOUNG: I didn't hear what he said so it is hard for me to.

THE COURT: But you disagree with it.

MR. YOUNG: Yes.

(The following took place in the cormitory area of 11 South, Dorm J.)

MR. CORSI: I would like to observe when the door is closed the noise level from the commons area is effectively cut off and that the noise does not come into the dorm unit itself.

MR. YOUNG: I would like to note for the

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record concerning the noise there are only seven inmates in this unit at this time and I would also like to call the Judge's attention to the fact that although the claim has been made that the ventilation system was corrected there is still paper blocking up the vents here and a paper blocking up that vent against the wall and a cloth covering the vent in that area (indicating).

I would also point out for the record that one inmate appears to have attempted to create a tent-like apparatus around the lower bunk bed for one of the bunks in this unit.

MR. SCHAFFER: It should also be noted that none of the vents blow directly across any bed, the vents are further out and the feet or maybe the head of an inmate who chooses to sleep that way but they are further out than the end of each bed.

MR. YOUNG: In response, since this is a matter of expert testimony, I would just point out that the vents are just slightly above the upper bunk and would circulate the air over the bunk area. That is what Mr. Nagel was trying to describe in his testimony.

THE COURT: I don't think Mr. Nagel is an expert on vents. I don't attribute anything to his expertise of your all purpose experts, Mr. Young.

I think the record should show that I am not going to credit them in every field in the universe on which they choose to testify.

I think the Government's statement on the vent situation is correct from my observation.

What else?

MR. YOUNG: That is all I wanted to record, your Honor.

I would like to note that we are on the lower lobby of the Metropolitan Correction Center. We just visited the eleventh floor dormitory and kitchen area.

We want to note for the record that in the eleventh floor dorm, although we observed approximately a half dozen documents posted on the bulletin board in English, certain policy statements, menus and schedules, that none of those documents were translated into Spanish or any other language.

I would also note for the record when we visited the kitchen we observed an individual preparing meat, flouring meat who was not wearing any covering on his hair which was in excess of two inches in length.

I also observed a girl cooking meat on the stove who was not wearing gloves or any head covering.

We also visited one of the walk-in freezer refrigerator rooms in the kitchen area and observed certain food that was uncovered and certain bags I believe of flour that were open, pancake mix.

MR. MUSHLIN: In the freezer there was uncovered boxes of sausage.

MR. CORSI: There was one pan in the refrigerator that was uncovered and there were approximately 20 other pans that were covered and I believe there were two bags of flour, pancake mix open and other bags were all sealed.

I did not go into the freezer. I don't know approximately how many other things were in there.

MR. MUSHLIN: One was a box of sausage and another a meat-like substance open.

MR. CORSI: The inmate flouring the meat was wearing gloves in doing it.

MR. YOUNG: It is now 10 after 12 and I would like to note for the record that there were no visitors who were processed and brought into the inner lobby although visitors were waiting to be processed.

I am pointing this out because there was a representation during the last tour that processing starts at 11.30 for the afternoon visits. The visits start at 12.30 and there has been no processing at this point.

The guide in all fairness, the desk officer is processing papers.

MR. YOUNG: But no people were brought into the inner lobby area.

DESK OFFICER: We were ready to process the work and we have about 20 applications but we didn't want to start bringing in visitors while you were here taking care of business. It could have been done.

MR. YOUNG: I don't want to alienate this officer but I just note that we just came in approximately two minutes ago.

THE COURT: See you at 2.15.

(Luncheon recess.)

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**AFTERNOON SESSION**

**(2:20 p.m.)**

MR. MUSHLIN: Dana Dynes is our next witness.

DANA DYNES, called as a witness by the petitioners, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MUSHLIN:

Q Miss Dynes, were you ever incarcerated at MCC?

A Yes, I was.

Q When?

A From September 23rd of 1975 until November 8th of 1976.

Q And where are you housed now?

A I'm in Hopper Home, Hopper House, a community treatment center.

Q While you were at the MCC, Miss Dynes, where were you housed?

A 5 South.

Q Were you employed at the MCC?

A Yes, I was.

Q Where?

THE COURT: On what ground?

MR. CORSI: I don't think she would have personal knowledge.

THE COURT: He is asking her whether she knows. She didn't say yet whether she claims to know.

Do you know?

THE WITNESS: Yes.

MR. MUSHLIN: I could ask another way.

Q Did you observe what was done for Muslim inmates in the preparation of food?

A Yes, I observed many times.

Q Could you describe what you observed?

A On times when they had a pork base, they just would not put pork on the plate. They would just put sometimes extra vegetables, sometimes not even extra vegetables. Sometimes they would just eliminate -- not put the pork on the plate, that's all.

Q Did you observe conditions in the storeroom?

A Yes, I did.

Q And did you ever have occasion to observe a puddle of water in the storeroom?

A Yes. There was almost a permanent puddle in the back on the left-hand side, which was there most of the time. I walked in there every day. It was there almost every morning when I came in.

Q Did you ever observe myself in the storeroom?

A Yes.

Q How often? And where?

A All the time that I was there, and all over, and we found nests of hundreds of little mice, you know, in cases. They had stacked tiers of cases, and sometimes there were old boxes that they had brought over from West Street, and we would find hundreds of little mice in there.

Q When was the last time you observed mice in the storeroom of the MCC?

A Up until when I left.

Q Miss Dynes, did there ever come a time when you were locked into your cell on the fifth floor?

A On several occasions.

Q And for how long were you locked in your cell?

A From a period of about an hour to, once, all night. Several other times it was three, four hours.

Q What were the reasons for these?

A Once there was an escape on, I believe, the ninth floor. Another time there was a murder on the seventh floor. Another time there was another escape. And one time there was a knifing on our floor. And once there was an escape from a hospital, or something happening from the hospital.

Q On all those occasions that you were locked into your cell, were all the other residents of the fifth floor locked in as well?

A Yes.

Q Were you given any prior warning that you would be locked into your cell?

A No.

Q Were there toilet facilities in your cell?

A No. Just a sink.

Q Did there ever come a time when you were locked into your cell that you had to use the bathroom?

A Yes.

Q Did you notify the guards?

A Well, I tried.

Q How?

A I started knocking on the door and then banging on the door. I even wound up kicking the door with my shoe. But nobody would come.

Q What, if anything, did you do?

A I resorted to the sink or held -- or just contained myself.

Q Miss Dynes, were you ever allowed to have visitors in your housing area while you were at the MCC?

A Yes. Only during -- there were two or three. They called them open houses.

Q Yes?

A And on these occasions we were allowed a certain amount of visitors that could come up into our actual housing unit and they could see our rooms and see where we actually lived.

Q What days of the week did this occur on?

A Well, they had them usually on Sundays.

Q For what hours?

A Between 10 in the morning and I think 3 in the afternoon.

Q Who came to visit you?

A On one occasion the man that I was seeing. On another occasion my parents came.

Q You also had visits in the fifth floor visiting room, did you not?

A Yes.

Q Was there any difference in your mind between visiting in the open house or in the visiting room?

MR. CORSI: Objection. I don't know what the relevance of that is.

THE COURT: Well, I'll allow it.

A Well, the difference was that you could actually have a visit, you could hear what your visitor was saying to you, and you could just be comfortable. There wasn't that pressure of having people running, children running around and people moving. You wouldn't be sitting back to back with people, like you were in the visiting room.

MR. MUSHLIN: Thank you. No further questions.

CROSS EXAMINATION

BY MR. CORSI:

Q Miss Dynes, when you held your position in food service, what were your primary duties?

A My primary duties as to the job assignment was bookkeeping, accounting and whatever else needed doing.

Q And where did you perform those dtuies?

A All over the food service area. My immediate job I performed in the storeroom and in the storeroom office.

Q And that is separate from the kitchen, is that correct?

A Across the hall, yes.

Q Across the hall and down the hall?

A Not really. Well, across the hall from the bottom door. The bottom door is almost parallel with the storeroom door.

Q And that's where you performed your primary function?

A And also in the freezers and in the other storeroom that was in the back of the kitchen, and also all the supplies that came out of the storeroom were checked out by myself that went into food service. So often I carried them myself across.

Q Isn't it true that every time you observed mice or other inspects and you notified the institution the institution took some corrective action?

A No.

Q Do you recall having your deposition taken on February 17th in this case?

A Yes.

Q And referring to pages 208 and 209 of that deposition, starting at line 23, do you recall these questions and the following answers:

"Q When you saw this condition down in the kitchen or the in the basement area, did you notify someone about it?

"A Yes.

"Q Who did you talk to?

"A Mr.Gould.

"Q And did he take some corrective action?

"A Always, yes. But there were a lot of them."

Were those correct answers when you gave them?

A As to the times that I informed somebody about it, as to the times that they responded, yes. But out of the year --

Q That was my question. Thank you.

You indicated that at one time you were locked in and you tried to notify a guard by banking on the door. How long did you try to notify the gaurd?

A On and off, about a half hour, 45 minutes.

Q Wasn't it about 10 minutes and then you stopped?

T2 pm

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Q When you have come here for that purpose, what areas have you conducted those interviews in?

A I have been to the area where they have the regular visiting hours; the areas where they have the attorney visiting houts; and the third floor for I think special meetings with my clients for parole revocation hearings.

Q Taking the regular visiting hours, I assume you mean the hours during which family visiting is taking place?

A Yes, I do.

Q Would you describe your experiences when you visited during those periods?

A I have found it impossible conduct an interview during the regular visiting hours.

The room is crowded and most of the time you cannot have a chair or a table and you cannot hear, it is chaotic inside the room.

Babies are crying, boy friends are arguing with girl friends, you can't hear, disturbing things are going on in the room while you are trying to conduct an interview and I found it just virtually impossible to talk to my client at that time.

They want to rush you in and out because there are lots of people waiting to visit during the regular visiting hours and the guard will indicate to you once you have been in about 15 minutes, that everybody in the room has to leave to give a chair or that half the room has to leave to give up a chair to let other people waiting to visit come in at that time.

In my interviews during regular visiting hours they are short and I cannot hear or conduct a proper interview with my client.

Q Have you had your visits terminated?

A Yes, always had, that is always the case.

Q Could you estimate the average amount of time between the time you entered the front door of the Metropolitan Correctional Center and the time you actually sit down with your client on those occasions?

A I would say in the general cases if I get in the front door at 8.30 -- just the last time I went over there --

Q In the morning?

A In the morning, my client's regular visiting hous are from 8.30 to 11 and I waited downstairs until approximately 9.30 before arriving upstairs.

I arrived upstairs, it was a quarter to 10, inside the area where they have the regular visiting hours to see my client and by 10 o'clock, to five after 10, the guard was asking me to leave so I got to see him possibly 20 minutes.

Q What would you estimate is the average delay you experienced? You say the last time that you visited. What is the average?

A In ours I would say the average delay in getting upstairs after I arrived in the front door, is approximately 35 to 40 minutes.

Q What is the range? What is the quickest?

A The quickest I have ever gotten upstairs is 20 minutes. I waited downstairs 20 minutes. The longest is approximately an hour 10, 15 minutes to get upstairs.

Q Have you in the course of your visits observed any reasons why it takes that amount of time?

MR. CORSI: Objection, your Honor.

THE COURT: On what ground?

MR. CORSI: I think all she can testify to is facts, not reasons.

THE COURT: Do you mean facts?

MR. YOUNG: Yes.

THE COURT: All right.

A Well, usually there is only one person onthe desk I think about 70 per cent of the time, only one man on the desk.

He is handling everything that comes in and that includes all the visitors, all the attorneys and he has to give you a piece of paper to fill out and he collects that paper. He has to check on that piece of paper and check on a list with all the names of the inmates to see who is on his list and put names on the paper for each person that comes in and the process go on.

He has to answer the phone that rings down there, makes calls upstairs in case there is any problem.

He has to search every one who comes through in that little area they call -- the little silver thing that checks you for weapons and observes everyone walk through there.

Once you walk through there he has to give you the body search. Once he has given you the body search, they search anything that you have on your which would include your briefcase if you are an attorney and pocketbook which I carry in addition to my briefcase.

And he takes things out of that, the pocketbook that are improper or he considers improper I guess he puts them in a bag and marks the bag with your name on it or with the person who you are visiting name on it.

By the time he does that for the people who are ahead of you, it takes that long and sometimes people who are not ahead of you have to go through this process, prisoners, inmates who work in the institution have freedom to go in and out, they go through that and they go before you.

Anyone visiting the prisoners who have special privileges, they would be, I have heard, GSA people --

MR. CORSI: Objection, hearsay.

THE COURT: All right.

A I have seen groups of people, the last time I came, 8.30 in the morning, groups of people who came in and were allowed to go through prior to me being allowed to go through when I had already been waiting approximately a half hour.

And those groups included up to 20 people in one group, approximately. The other group, approximately 30 people and all of those people went through, was searched before I was allowed to go in. I didn't get upstairs for an hour and 15 minutes that day.

Q Do you encounter any delays between the time when the processing that you have just described is finished and the time that you take the elevator up to the floor that you are visiting on and actually sit down with your client?

A I have gone through the process and after going through the process I have to wait to get upstairs.

In fact, my very first visit to the MCC in December of 1975, I think, I went through the process and they opened up the door and I went in the elevator and they left me in the elevator.

I was in the elevator for approximately 15 minutes and I was horrified. I pushed the buttons, they did not light up. I hollered and nobody heard me and apparently someone else came in tc visit and they opened up the elvator and another young man came in and I indicated that they had left me on the elevator since the time they put me in.

I have gone on other occasions and they left me in the elevator but never that long, for 15 minutes. That was the longest I have ever been in and I never knew that I was afraid to be locked in a room until that day. I was so shocked I couldn't interview my client.

Q You described the search of your bag and stated certain things were taken out of your belongings. Would you describe what sorts of things are removed?

A Every time I go I have had the problem with my bag, since I carry a makeup kit which is in my bag and that has scissors in it that I use for makeup purposes and they take them.

I have medication in my bag which they take all the time. The problem I have most with, since I am single I use birth control pills and they take them and I left them or they have lost them during the time that I have been up to visit and I come down and asked for my bag and they don't have it and it caused me great problems.

Q You testified that you also visited on occasions during attorney visiting hours. I assume you are referring to the 4.30 to 6.30 hours you can visit on the eleventh floor that is reserved for attorneys?

A Yes.

Q Would you describe your experiences concerning that visiting in that area?

A Our biggest problem as we cannot make the attorney visiting hours between 4.30 and 6.30. We are in New Jersey -- I should say I am in New Jersey.

I am in New Jersey and if I am on trial and the trial starts at nine and ends at approximately 4.30 or a quarter to five, there is no way that I can make it to the MCC by 6.30 to visit my client.

If I am on trial for weeks, three weeks, it means I will not be able to see any of the other people who I represent who are the MCC because I cannot get here in time to see them.

Our clients have complained endlessly and we have had the problem --

MR. CORSI: Objection, your Honor.

THE COURT: It is all right.

A -- of appearing before judges when clients have requested to be relieved of our representation because I have not been able to visit my client.

I have not been able to visit my client over periods of time because I am on trial, especially a client whom I pick up on arraignment and I start a trial within the next few days and that trial lasts for a period of two or three weeks.

It means that the client who is at the MCC, I am not able to see during the entire period of time that I am on trial and my clients have written me and I have had to appear before judges and Federal judges in New Jersey have been concerned because clients are constantly complaining about being unable to see persons who I represent at the MCC during the attorney visiting period.

If I am able to make the attorney visiting hours because I am not on trial and I don't have to be at the office between 9 and 5 -- there is a requirement that an attorney from my office must always be there between 9 and 5 in case a judge needs an attorney on an emergency basis.

If I am not that attorney and I am able to come over to the MCC, I have had some problems getting up to visit my client and I have had some problems once I have gotten up to visit my client, because you have the problem of there not being enough chairs, enough tables, of their being very crowded because attorneys are there at that time and I can't hear.

It is not as bad as it is at the regular visiting hours but it is bad and I guess I could say the biggest problem is that the scheduling of hours for the regular attorneys' hours has interfered with my relationships with my client because I cannot see him du4ing that time and I imagine that other clients do get to see their attorneys and complain that because I am the public defender I am not representing him or I don't care about him or I don't want to see him and if they have money to hire a private attorney, the private attorney would be there.

(Continued on next page.)

Q All right.

MR. CORSI: I move that that be stricken, your Honor.

THE COURT: No. It is not hearsay. It is what somebody said to her.

Q During the period that you have been in the attorney visiting room on the eleventh floor during attorney visiting hours, have you ever had occasion to overhear other conversations?

A I always overhear other conversations when I'm in there during attorney visiting hours. It is impossible not to. The room is not large enough for the normal amount of attorneys who I see there at that time, which may be 15 or 20 in one room. The room is not large enough for you to have any area of space to conduct an interview without hearing what other attorneys are doing, and I also have the additional problem of the staff not believing that I am an attorney and I've had problems getting up there during attorney visiting hours because of inadequate identification. I don't know what other identification I can possibly have, and I still have problems with the people at the front door or at the bottom desk not believing that I am really a lawyer and letting me go upstairs as a lawyer.

If that happens during the day, I can run around to the warden's office and raise Cain. If it happens during the evening, I don't have that option because they are closed. And, I don't know, maybe they look at me and think I don't look like a lawyer.

THE COURT: You have to get older and fatter.

A (Continuing) And I can't get up. I have the I.D., the official I.D. that they have given me out of Washington. The picture looks exactly like me and I've had guards tell me that my I.D. doesn't say Justice Department and therefore it is not a proper I.D. And I don't work for the Justice Department. I'm funded by the courts, and my I.D. will never say Justice Department unless I change my job, and I've not been able to get up on occasion because they they not believed I was a lawyer.

Q All right.

You testified that you've also visited on the third floor or had special visits. Would you describe the conditions for those visits?

A I have never had a special visit that has worked out the way it is supposed to work out according to the rules that I've been given.

I've had parole revocation hearings -- I'm sorry. That is not a special visit.

I have arranged special visits because this was one of the ways we thought we might be able to avoid the problems of not being able to see our client. Two examples of a special visit.

Most of the time you arrange a special visit through the warden's office, and when you get there there is supposed to be a slip on the desk which confirms that you have arranged a special visit. Therefore you can go up.

I have arranged a special visit and come in and there has been no slip on the desk. If there is somebody in the warden's office, then I can go in and try and find out what happened so that they will believe that I have a special visit. But if Mr. Butler or the warden is not there, then I do not get to go up, because they are the only persons who can give the okay for me to go up without the slip.

I've had special visits where the slip was there but my client was not on the third floor.

Well, first I should indicate that I've never had a special visit that was scheduled at 3 o'clock or 2 o'clock and been able to get up in time for the special visit even though I arrive in time. If I arrive at a quarter to 3 for a special visit at 3 o'clock, it makes no difference that I have a special visit. If it's regular visiting hours for the fourth floor, I still have to wait for all that -- all the people to go through before I can get up for my special visit, which means I can get up at 4 o'clock even though I have a special visit scheduled for 3, because it doesn't speed the process.

On the occasions when I have had a special visit scheduled and I have been able to get upstairs, and I've never been able to get up there on time, I've never been able to get up on time, and when I do get upstairs, I've had the problem of not having a room and not having my client because the staff on the third floor does not know that I have a special visit. Even though I have a slip in my hand, they indicate, the staff has indicated to me that's the first time they ever heard I was coming for a special visit. Now we have to find Miss Thornton's client.

My client has not come down on many occasions for an hour and a half after it has taken me 45 minutes to an hour to get upstairs, for many reasons: it is feeding time, it is count time, "When the second bell rings we can bring him down."

I've arrived for a special visit at 2 and not seen my client until 4:30, even if I've gotten upstairs by 3 or 10 after 3, because the third floor staff was not informed and they don't have my client down to be seen.

Once they get him down, there is an additional problem of getting a room, which also takes time.

Q What do you mean, there is a problem of getting a room?

A There are no rooms available, they are locked, or they are being used for something lese, like parole hearings, or other attorneys who have special visits scheduled.

There has been one staff person who has been helpful in that he indicated to me that if I ever had a problem, to call him up and let him know that I have a special visit scheduled and he'll make sure that the third floor knows so that my client will be down when I get there, and I have called and it was very nice of him but I haven't been able to reach him. So that hasn't worked out for me either.

Q Mr. Nagel, did you seek to verify the inmates' statements on 11 South that fights occur in the dorm rooms?

A No, I did not.

Q Did you see to verify whether abnormal sexual behavior was occurring on 11 South?

A No, I didn't.

Q Did you observe Muslims praying at the urinal?

A No, I didn't.

Q Are you aware of any prisons, correctional facilities, that require inmates to wear uniforms?

A Yes. Not terribly long ago almost every institution did, but there has been a very definite shift away from it, and particularly institutions for the untried.

Q But there are also detention centers that require uniforms to be worn, is that correct?

A I'm sure there are.

Q Isn't it true that most high-rise detention centers restrict or impede movement of inmates between floors?

A The very nature of the high-rise does that, but it needn't.

Q I'm sorry?

A But it needn't.

Q Can we agree that the MCC has maximum security as an external matter but that internally it is something less than maximum security?

A No, I would not agree with that.

Q I believe you indicated that you had testified in the Tombs case, and that testimony was quite recently, on the reopening in November.

Do you recall this colloquy at page 1604 with the Court and with counsel for the City:

> "A (Referring to the MCC now) Pretty much the whole institution has a great deal of maximum security to it.
>
> "THE COURT: In the sense of external?
>
> "THE WITNESS: External.
>
> "Q What about internally?
>
> "A Internally there is obviously, if you are in a -- let's talk about internally a bit. I am trying now to recall specifically my recollections of the Metropolitan Correctional Center. If my recollection is right, people could go in and out of their cell at will, out of their room at will. That's a quality that reduces the nature of custody.

"Q It does?

"A In my mind it reduces it from a total maximum security towards something else. It was my recollection that was true. It was also my recollection -- and I wish that I had known that I was going to testify to this because I would have reviewed my notes that I wrote quite copiously immediately after I left there, but it was also my recollection from the little modules that were the cell areas, you could come to a day room, and also off the day room there was an education area and quiet areas that you could move from one to the other without supervision or without passes, or whatever. This reduces the total maximum security nature of the place."

When you gave that answer was that what you believed?

A Yes.

Q And do you still believe that?

A Well --

Q Yes or no, Mr. Nagel?

A I can't answer yes or no.

Q Is it one of the key features of non-maximum security confinement a solid door rather than a grill or

No, I don't think it is true.

Q Do you recall giving testimony in the Rikers Island case before Judge Lasker?

A I gave testimony.

Q And that was in October of '76?

A Yes.

Q And do you recall the court making this statement and you responding:

"The Court: It is easier if somebody is running a kitchen to deal with the same people at least six months at a time instead of just having changes every two, three weeks.

"The Witness: You would want a basic cadre, certainly the butcher, the chief cook and so forth"?

A Yes. But that is different than saying it nwas necessary. You asked me if it was necessary and I said it was not necessary.

Q Is that your answer?

A Yes.

Q And would you agree with it today?

A I would want it. It makes it easier. Everything that makes it easier people would want. But it is not necessary, and that was your question.

Q Thank you.

Isn't it true that none of the detention facilities of a size comparable to MCC offer or guarantee a job to every detainee?

A They don't.

Q That's true. My statement is true, my question is true?

A Yes, it is true.

Q Isn't it true that the visiting schedule at MCC is more liberal than at most jails and detention facilities with which you are familiar?

MR. MUSHLIN: I am going to object to the comparative nature of all these auestions. I thought there had been a ruling that there was not to be comparisons between other institutions.

THE COURT: Well, I've allowed a fair amount of comparison between jails, and that's what he is asking about. I'll allow it.

MR. MUSHLIN: Your Honor, it has not been done on direct examination. It has been on cross.

THE COURT: It has been done. But I'll allow it.

A Will you ask the question again, please?

Q Isn't the visiting schedule at MCC more liberal or doesn't it afford more visiting than at most jails or detention facilities with which you are familiar?

A Well, in some respects it is. First of all, there is contact visiting. That is more liberal than most.

Q Yes.

A In terms of the hours, for the number of people I cannot testify there right at this particular moment because I can't review what the visiting schedule is of every institution I'm familiar with. And some institutions that I'm familiar with, I'm not familiar with visiting schedules.

Q Do you recall testifying in the Queens House of Detention case in November of '75 and giving the following response to a question on the topic of visiting, page 846:

"A The second reaction is that four one-half hour visits a week seems to be quite generous and, indeed, it is in regard or relationship to other jails that I have been in."

Is that an accurate statement?

A I said it in 1975.

Q And didn't you go on to suggest that it would be better to reduce the number of visits but lengthen the time per visit?

A My recollection was that it took so long to get into the visiting room and so long to get out of the visiting room that I recommended that if there was only that much space that it would be better to have a longer visit where you could discuss something through rather than what really turned out to be less than half an hour visits.

Q Did you inquire of the warden at MCC if contraband had been discovered in the rectal area of an inmate during a strip search after a visit?

A I didn't talk to the warden of the MCC.

Q Did you inquire of the warden or correctional officers at MCC concerning the introduction of contraband such as money and drugs into the institution?

A As a matter of fact, the first time I did, and this was last summer, when I visited there. I spoke with the assistant superintendent as to whether there were problems relative to the contact visiting because contact visiting, as I've testified, is not common to every jail in the country, and relative to the introduction of contraband in the institution.

And my recollection was that he said there were some problems.

Q Thank you.

Do you know of any detention facility of a size comparable to MCC that allows visiting within the residential unit or the cell block?

A Well, we testified relative to that regarding the very specific architectural structure. I don't know of any institution that has that kind of readiness for it, so I do not know of any.

Q Let me repeat my question. Do you know of any detention facility of a size comparable to MCC that allows visiting within the resdiential unit or the cell block? It calls for a yes or a no answer.

A It calls for a yes or no answer. But it also calls for me reflecting on several places that I've been.

Q Yes.

(Pause.)

A I don't think that I can think of any.

Q Isn't it true that the design of the MCC goes beyond the singular purpose of security and that it's design is an attempt to save and maintain human values and human concerns?

A Well, I think that's true. I think they have done it more than anybody.

Q Thank you.

Would you agree that given the relatively rapid turnover of the jail population, such as at MCC, it is appropriate to use confinement practices which are different and in some instances more restrictive than those that would be used in a prison where the inmates are there for a long period of time and you have a chance or an opportunity to develop a sense of what they are like and what they can do?

A Well, the general explanation that has been given by jail wardens as to why they are more restrictive than prisons is because they say they don't know people, and that's been there justification for having conditions that are more restrictive than those in prisons.

Q Would you agree with that?

A I think that there are classification methods that can determine those individuals who represent severe escape risks that can be applied very quickly and don't require four to six months to determine them.

Q Are you aware of the average length of stay of the various classes of inmates at MCC?

A Well, there is currently -- I don't know what the average is, but they apparently run from two or three days to eight or ten months.

Q But you are not aware of the average.

A No.

Q Isn't it true, Mr. Nagel, that you are considered in the profession as a maverick in terms of your views on appropriate correctional practices?

A Well, I have been described that way by another attorney in another trial, and --

Q Would you agree with that?

A I wouldn't disagree with it. That's part of what I said the other day when I told you I was unfettered.

Q Mr. Nagel, getting back to the recreation schedule, assuming seven days a week, approximately an hour a day, would you say that that is more liberal and allows for more recreation than at most jails?

A If it were used, yes.

Q Do you know whether it is used?

A Well, I told you that the two times I was there there was nobody in the recreation area.

Q What time of the day did you go there?

A Well, I don't remember the first time.

in that case that the visiting schedule was unnecessarily restrictive, in your view, at that facility?

A I don't recall whether I did testify to that or not.

Q Okay. And in the Queens case that Mr. Corsi discussed with you did you testify that work opportunities for detainees were important and should be made available?

A I did testify to that.

Q Have you ever asked to appear on behalf of a State Department of Corrections at any appointed governmental agency or legislative committees?

A Yes, several times, many times. Tomorrow I have to testify before the legislature in Connecticut at the request of the Department of Corrections.

MR. MUSHLIN: No further questions.

RECROSS EXAMINATION

BY MR. CORSI:

Q Mr. Nagel, isn't the predominant determination of institutional life the housing unit that the individual is assigned to?

A That is the most important one, yes.

MR. CORSI: I have no further questions, your Honor.

Q Do you have an opinion as to whether or not the roof that you observed is an adequate outdoor facility for that institution?

A I believe it is not an adequate facility. It is certainly not adequate for outdoor, and it is not adequate for gym facilities for a couple of reasons.

One is just the space requirement. The other is the obvious unusability of it for half a year. I think that would be charitable in weather conditions in this area.

Q Now, you observed the exercise rooms and the living units themselves. Do you have an opinion as to whether or not they are adequate indoor recreational facilities?

A I think that the prisoners joke about them. You can see signs up about the gym is open. All you have got in there is a TV set, an exercise machine of some sort and a medicine ball. You put in two of the benches that they have seating four people to watch TV, you have no space. All you have is aisle space, just walking between everything. So I could hardly call that -- I think the reason they call it a gym is because it is not a gym. They are joking about it. I am not sure what it was designed for.

It was supposed to be sort of a secluded area, but I am not sure what it serves.

Q What is the importance of having a general library and a law library and a chapel or an auditorium in a facility such as this?

A I think that in almost any kind of facility where you have people for any length of time against their will you want to have some variety and provide for a variety of program needs.

Some will need libraries and some will need chapels and some may need to just sit quietly, or a music room or whatever else.

You do not find this. You just find each unit is a duplicate of each of every other unit, which has a certain kind of economy to it, but very, very narrow range of activities: ping-pong, pool, exercise room, medicine ball and a TV set. That would be it.

Q For an outdoor facility what sort of space would be an adequate facility for such a facility as this?

A Not in square footage, I simply haven't thought about it, but it would not be difficult, I think for architectural treatment, to relieve the feeling of confinement in that building by opening up, for example, the roof.

First of all, it needs a roof. It is not -- it is a rooftop facility, but it is open on top, as you notice. In order to get maximum use you would first have to close off the top or have it so built so that it could be open and closed.

Then I would open up those walls a bit just to let New York in. That would give a feeling of openness.

There are a couple of unused areas that are sealed off but are rooftop, and I don't think it would be very difficult to put a few chairs and tables out there, weatherproof tables and chairs of the redwood variety, and just have people up there who want to sit around and just to get some fresh air.

Q Dr. Fogel, are you familiar with the term "functional living units"?

A Yes.

Q What does this term mean?

A It has a variety of different names, "unit management" or "functional living." It is a fairly new development in the last several years. Many states have gone into it. The literature has developed around from Cell Block A, B or C on different shifts. You now have a small, manageable, functional unit.

It's different in a state institution as opposed to what you see here in the MCC because in addition to the functional unit in a state institution, you still have -- whatever it is -- 500 acres or 1000 acres inside of a walled space, you still walk through central facilities, you still use a ball field, you still go to work in industries. There is a chapel. They don't try to duplicate everything physically in every one of those units. It's meant as a management tool and something that presumably was to increase communication and therefore good relationships between inmates and staff.

But in a high-rise design you achieve simply several minijails.

Q Let me ask you,while you are on the state prisons, what have the results been of the operation of this concept in those type facilities?

A There is no evaluation any place. I asked at MCC whether the federal government was doing an evaluation of it. I heard vaguely that they were, but I have not seen, you know, a program that is set up to do extensive evaluations.

Like a lot of other things in corrections, it sounds like a good idea at teh time and we did it.

(Continued on next page.)

Q Do you have an opinion as to what the suitability of this concept is as you saw it at the MCC yesterday?

A Well, the treatment, see, I think the idea may still have some merit. The problem is that when you -- the functional unit is a human sort of response to a prison which is not, you know, normal society, and it is a way of coping inside. Once you set the architecture to this notion, like you do get a high-rise, you are simply stuck with it, and you haven't achieved -- well, you probably have in a sense, the functional unit rhetoric, but you have also confined yourself immediately into a series of little mini-prisons because you do not have the advantage of a state prison which has all these central services and where you can walk around and have a variety of activities. You cannot build in a high rise all of the -- it is prohibitive in cost to try to have a chapel on each floor, to have a gym on each floor, and such. But that is not -- that's no excuse for not having provided it as a central service where everybody from any of the units could participate in that without in any way jeopardizing the integrity of the idea of functional unit management.

And what it really does is, the feeling I get about it, and admittedly I've only spent six hours, minus lunch, in the place, but it is not the first jail I've been to, and I've been in the Chicago Metropolitan Correctional Center as well. You get the feeling of unrelieved boredom and compression in a tightly sealed unit where noise is magnified and tensions have the opportunity of increasing and you are sort of bumping into each other wherever you go. You are also seeing just the same faces. Philosophically that was the reason for the functional management unit: see the same faces all the time. But, again, the state prison relieves that by being able to go out of the unit to work during the day, back in the evenings where you may eat or sleep or watch TV or may get some counseling and such. There I do think it has some merit, but in the jail it's simply very, very compressed.

The problem also I think in a high rise, a feeling I get out of it, was that this kind of architecture simply exacerbates a set of problems that you normally bring in because you are in jail, and the jail architecture out to be in the service of at least not exacerbating. You may not be able to do too much with it but it should not exacerbate.

This unrelieved, well, compression is the best word I can think of, is onerous beyond the deprivation of liberty, which the jail necessarily entails.

I am not suggesting you don't need to keep people there. See, the conventional correctional wisdom about program speaks of diversity, space, activities. Some inmates, the literature simply says, some inmates need large motor activities, others privacy, others cultural outlets, still others craft or music, and probably everybody needs some outdoor time, just walking, stretching, seeing a patch of green or whatever. You don't see it provided in this kind of MCC architecture, and one has to assume that there must be a repression of this variety of individual needs in any population of four or five hundred would bring into a prison. The needs don't disappear, I'm afraid. I think they just get rransformed into tensions and hostilities, and you probably endanger both the safety of the inmates and the staff.

If you throw into that mix overcrowding, then you increase the probabilities geometrically, and I saw some of that.

I'm afraid that the corridor on the floor doesn't mitigate the negative effects of sealing in a group of people together. This would be true, I think if you sealed them in the Ritz Carlton or some fancy hotel. If thats it, and that's all you are going to get and you are going to be in that room, you can have comfortable furniture and a carpet, but a carpeted tomb is still a tomb.

I'm really very sorry to see that happen because the Federal Bureau has such a very good reputation, probably the best that we in the corrections field have. But I don't think that, you know, it's fatal. I think that things can be done with MCC.

Q What sort of things do you think can be done to alleviate the problems?

A Well, I would not -- I would just, you know, tell you in principle a few things that can be done, but obviously it would require sitting down and working it out. But as I said, opening up space --

MR. CORSI: Your Honor, I'd like to object. I think we are getting into areas of recommendations and so forth, which I think is inappropriate.

THE COURT: Look, I'll take them. I have made clear to you that the petitioners' burden is to show that they have a right to any of these things under the Constitution or some statute or something, and it is perfectly clear to all of us by now that the fact that some expert would recommend them doesn't give them the status of a right but it may move them in that direction, and we will take it on that premise.

A Well, introduction to a couple of, you know, recommendations, and they certainly wouldn't be exhaustive. You see, I see that the sum total of the functional unit at MCC has simply taken the rhetoric of functional unit and called it innovation. It is innovation through rhetoric, is what I mean to say.

The programs are minimal, they are duplicative. Each unit looks the same. Uniformity seems to be something that people are straining toward to the point of jumpsuits for women, which was a little bit startling. The confinement of space and the lack of program makes it deadly boring, so if the architecture forces this unrelieved boredom, the recommendations would be sort of to break that up.

One of the things you could do is do something with the clothing that wouldn't cost very much. You could do something with visiting out of those little stuffy rooms into the day room, the common area space.

You could open up the roof. You could put a little bit of green up there. You could put some central services. And I'm not addressing myself to cost because I simply don't know them. But a gym, and a chapel, and a law library, and a general library would be beginning steps.

Q What class of confinement does this functional living unit concept impose upon inmates and residents of MCC?

A Well, for almost all of them the architecture forces it, makes it maximum custody. No matter what you call it, it's maximum custody. That's a very tough place to get out of. Human ingenuity will permit a few to get out, and they have, but this would be classified, in my judgment, as maximum custody, except for one group, those who are convicted felons have free movement. Everyone else is a maximum custody. But even that they don't get, I don't believe, except for a few red stripers can get to the first floor.

Q What is meant by the term "maximum security custody"?

A Well, there are two terms. Sometimes it is the prison, you classify the prison as maximum custody. Sometimes it's the status of the inmate, depending on the classification scheme of some sort.

You could be, for example, in a medium custody institution, but be labeled, classified maximum custody, which would mean that you would require close supervision, even to cross a courtyard. So that one is an individual status of an inmate, the other one is the status of the institution. And jails are normally thought of to be maximum custody, but jails also, depending on the status of the person in it, like for a person who is a convicted misdemeanor or something, might be in a totally other part of the jail once the litigation is over, might be at work release, or call it in Wisconsin the UBAH law, people going outside, or study release. It could be all sorts of confinements less than maximum custody. But here everybody is necessarily -- almost everybody is necessarily in maximum custody because of the architecture.

Q Dr. Fogel, did you observe the administrative detention area on 9 South?

A Yes.

Q Did you learn whether inmates who are held in that status are allowed out of their cells for recreation or for showers?

A Yes, I spoke to the -- I met with two inmates who were locked in. They let one inmate out and the other one was wandering around anynow. He was supposed to be locked in but he was busy painting and exhibiting his paintings. And we talked with the officer in charge and then Mr. Frey, who is I think above thue officer in charge, and stayed in that unit for about 15 or 20 minutes.

I was told, and they have a very good system of recording it, that inmates are permitted two showers per week and they are permitted two hours per week out of their cell for exercise.

Now, it should be noted that 9 South has a little secure unit in it, and those cells are different from other cells. They are higher level custody doors, and you simply stay in there during administrative detention. It's a jail within a jail. You are in there during the time of internal litigation if you violated rules of the prison, of the jail.

The one inmate that I spoke to at some length, one of the two inmates, had been put in there on Sunday, claimed he hadn't been out at all except for three litigation hearings, all of which were -- did not come to a decision, so he was still locked in.

The -- Mr. Frey agreed that he had not been out but his week isn't up so he still has his two hours coming, and then when we went later to check the records that I asked about, just to verify what the inmate told me, the guard at the front desk of that unit pointed out and showed me initials where Mr. Gardner, the inmate, had been out for a half hour during that week, although he claimed he hadn't.

It's a -- it's an odd unit, because it is sealed off at the front, and then there is a panel of custody rooms, but it is really not sealed off. There is no lock on it, there is a door, but I guess the lock hasn't been installed yet sealing off the entire unit. It has a very small hallway, with cells facing each other in that unit, and in the middle of the hallway, presumably the hallway is for exercise, is an exercise machine. In other words, you have to walk around it if you are going to exercise.

Now, I asked him where they exercise, and the officer told me that when they let them out for a half hour they try to keep them in this hallway around the exercise machine, but at the officer's discretion the person can go up a few steps into the day room of 9 South proper where he mixes with a number of -- well, everyone else who is living there.

Now, I thought that was sort of odd for a maximum segregation unit, and on the other hand it then occurred to me that the guard is probably right in letting them go up there and exercise because the entire thing is really maximum custody anyhow, even the unit proper, much less this little further entombed unit for segregation. And the only time you should use that segrefation, it seems to me, is when a person is out of control, and then they have left to the staff the discretion of simply letting the person out of the unit and thoroughly into 9 South.

But I was not -- I was a little bit surprised to see that two showers a week and two hours per week, either at the discretion, a half hour or an hour at a time, of an officer in charge.

Q Do you have an opinion as to whether or not that practice, two hours a week at the discretion of the officer in the unit, not outdoors, and two showers per week, is an acceptable correctional practice?

A It is -- I think it is wholly unacceptable. I mean you'll see it going on around the country, but I was startled to see it in a federal facility. It doesn't meet, you know, even a few standards that are recognized any place.

THE COURT: Recognized by whom?

THE WITNESS: Oh, say, the National Sheriffs Association would require an hour a day outdoors. I would go for an hour a day even indoors. At MCC the National Advisory Commission, an hour outdoors. We had the American Association of Correctional Administrators, which I participated in, do some guidelines, and we came up with something more than an hour a day, I believe. I don't remember the exact number of minutes, but it would be -- it would be nothing less than an hour a day.

Q You observed the women's unit on 5 South, did you not?

A Yes.

Q And did you observe the individual rooms on that unit?

A Yes.

Q And the furnishings in those rooms?

A Yes.

Q Did you have an opinion as to whether the furnishings in those rooms are adequate and the construction of those rooms are adequate for the purpose for which they're being used?

A Well, the first thing that hits you if you go around to enough institutions is that the doors are hung the wrong way for a jail, for a custody institution. They open inward which provides, which makes for very difficult for custodial staff if there is a period of upset.

Either the person can barricade themselves in or if you're trying to get somebody into a room and you're struggling with them you can see what will happen if you have the door opening into the room. The person can hold on to the door and you have to pull the door shut rather than push it shut which makes it easier.

So after years of practice with that most institutions will simply have the doors open the other way.

Q Did you notice how the doors in the other units open?

A In, I believe they open out in the other units. I think this was the only place where I noticed them opening in. But it was, it was softer construction you know, the wood door and so on, but they obviously made a mistake there, or it -- it's probably not being used the way they initially intended because there are no bathroom facilities inside. And so if women are confined -- neither are they locked in. I mean they can go out to the bathroom, but because it's the only women's facility. Those would be doing disciplinary time and being locked in have a couple of options if they have to go to the bath room at night, knocking on the door and waking up the unit, upsetting everyone, or using the sink, which according to a wisdom on the unit is what they use.

Incidentally the wisdom on the unit means the only staff person I spoke to there who happened to be a male. And so if a woman only has the need for urinating in the evening she can go use the sink. Otherwise you get into all sorts of embarrassing situations.

MR. CORSI: Your Honor, I'd like to object and move to strike. I think we're getting much into hearsay now.

THE COURT: Yes. Well, I will disregard it on your advice.

MR. CORSI: Thank you.

Q Is it a suitable correctional practice to lock people into rooms without toilet facilities?

A Maybe for very short periods of time. Even the maximum -- well, especially the maximu custody cells would have toilet facilities to lock people in rooms when there are no maximum security need is simply not acceptable I don't think.

Q Now you observed the uniforms, did you not, that the women wore and the other inmates in the MCC wore.

Do you have an opinion as to whether or not those uniforms are necessary for security of the institution?

A Well, they're certainly not necessary for the security of the institution as far as I can see. The bit of anomaly with those uniforms, Federal system has pioneered getting guards out of uniforms across the nation, and the states have pioneered in getting prisoners out of uniforms and here you sort of see a reversal of it. Here they're getting prisoners into uniforms, not very attractive either.

But I think it sort of fits with the whole scheme of the place. Everything is -- there seems to be a strain toward uniformity in the place in color schemes and each unit looking alike, et cetera, and the uniforms sort of fit in with that. But I, I tell you I was a little bit surprised.

In our culture at least women take some pride in dressing differently I think men do, too, but it was a little bit more startling to see that on the women's unit, these jump suits.

Q Now I'd like you to assume, Dr. Fogel, that when searches were done of the inmates' rooms at the MCC it is a practice in the Metropolitan Correctional Center not to allow inmates to observe those searches.

Do you have an opinion as to whether or not that is a suitable correctional practice?

A Unless the person is out of control at that moment I would, I would let him observe. I don't think it's suitable not to. I mean I think he should observe what is being searched in his room.

Q Why do you say that?

A Well, I think, you know, we're the agents of law and we convey the meaning of the sanctity of private property. You don't go rampaging through. You collect what you believe is contraband. You inventory it, make an inventory of it, and give a receipt for it. That's how you would convey lawful behavior.

Q What's the effect upon the inmate if you don't allow them to watch the search?

MR. CORSI: Objection, your Honor.

THE COURT: Sustained.

Q Did you observe the elventh floor South dormitory area, Dr. Fogel?

A Yes, I did.

Q Incidentally, were you there at food service time?

A Yes.

Q Did you notice whether inmates who were serving food wore gloves?

A They did not wear gloves. I looked specifically for that. And -- well, that's your question.

No, they were not wearing gloves.

Q Did you notice whether or not inmates in the food service area, any of them, were smoking?

A One was.

Q Did you reach a conclusion as to whether or not that area from your observations was adequate to accommodate the number of persons who were there at the time?

A You mean all of 11 South?

Q Yes.

A It was not. The first thing that hit you is the noise, aside from the crowding, just people milling around. But the noise is simply not observed any place. It seems to bounce off concrete walls and you can't get away from it whether in a room or on the so-called classroom or the gym area as they call it.

It's extremely -- the TV, the Ping-Pong and the pool are the three things you see. Seating for about 12, but you've got to understand there are a hundred or 20 or so in there. There is a staleness in the air. I visited one of the dorms, two of the living dorms I believe and --

Q Could you tell us whether or not you reached an opinion as to whether or not the individual dorms that you observed were adequate to accommodate the number of people who were using them?

A No, I don't believe they are. You have about 20 housed in the room that looks like it could do minimally for about half of that number.

The problems, you know, you got a mini high-rise. You got bunks going up, but that also begins to take the space, the little common area space you have within the dorm away, because now they're, I think about five tables. And there are at least 20 chairs and the tables and there is no space.

There is just aisle space as you go in between the tables, and that's, I don't think that's adequate space.

Of course you have the day room right next to it, but when you close that door it gets pretty foul in there. The bathroom facilities are not adequate either.

Q Did you observe the visiting room?

A Yes, I did.

Q Was that on the 11th floor?

A Yes, the North and South. I don't know what the, what the plan was there. Probably the overcrowding has destroyed any of the planning in advance. But there is a sally port that you come into. It has a fan and there is only one staff member in there. It's a very small area. And then off both sides of the sally port are glass enclosed rooms. Neither one had a fan.

The temperature -- it was very, very hot in there. The air was stale and heavy. The privacy is gone. The closeness of chairs destroys that whole possibility, and I think that eight groups --

Q Let me ask you, are you talking about 11 South and 11 North when you make that observation?

A Yes, for both. I went into both areas and they were both crowded. It's the closeness of the chairs that destroys any kind of privacy. You can still see the visitors straining for all sort of intimacy, but at least it's embarrassing, if nothing else.

You've got three kind of groups in there. I would say you've got people that are simply visiting at arm's length. You've got people that are visiting and not so arm's length, and you've got people who finished their visiting and are just sitting around waiting. That is convicts waiting to go out, but they can only go out in a group, and so they're sort of sitting around aimlessly. They really have nothing to do there.

I noticed on the wall what presumably was bathroom behind it, there was a notice dated 4-11-76 saying that the washrooms would be shut. But I also noticed on the unit before I visited the visiting room on 11 and on the other units as well that there was another notice on the board superseding that saying, on 3-15-77 that the -- I'm sorry. 3-17, that was yesterday, that the visiting room bathrooms would be opened. You'd have to get a key to use it from a staff person.

But when I went back out the 4-11-76 notice was still up with no notice to the public that they could use those bathrooms. So I observed the situation of a woman who had to lose part of her visiting to take her young child downstairs some place and then make the whole return trip upstairs.

MR. CORSI: Objection.

THE COURT: Well, we know that that is what goes on so I don't know that it matters really.

Q Do you have an opinion as to whether that's a suitable correctional practice to deny visitors access to the bathrooms in the visiting rooms?

A Suitable, no, it's not suitable cdrtainly.

Q Is it necessary?

A Well, obviously they didn't think it was. They built bathrooms there. I think especially with young kids you never know. They have three hours a week --

Q Let me stop you before we get to that, Dr. Fogel, and ask you what's the importance in your view of visiting for inmates such as those confined at the MCC.

THE COURT: Look, can't you abbreviate this? You know I've heard about this and I keep trying to tell you, and I failed, that I know some things, too, you know.

MR. MUSHLIN: I understand, your Honor.

THE COURT: Let's proceed.

Q I'd like you to assume, Doctor, that the visiting room is open three hours per day at the MCC and that three visits are allowed each inmate per week; some may be as short as one hour; and that the visiting room is only open during daytime hours.

Assuming that do you have an opinion as to whether or not that's a suitable visiting schedule for facilities such as MCC?

A I don't think it is, and I did some arithmetic with that. You would necessarily, if everybody was using it with any regularity, you would always be overcrowded in those rooms with 15 units of visitors, a unit being I think you can have a couple visitors at the same time up to three. So if you would have 15 units, not counting the prisoners themselves, you'd get upwards of 50 people in that room. It certainly doesn't hold half of that comfortably.

Q Now did you observe the housing areas themselves in the MCC?

A Yes.

Q Having seen those areas, the living units, do you have an opinion as to whether or not those areas would be suitable for a program of visiting on the units?

A The day room, the common room part, yes, I think it would be quite suitable for visiting.

Q What would be the advantages of such visits?

A Well, space is one, circulation of air. You're inviting people into your living room so to speak. You're a little clumps of visitors. You could have more of them. They wouldn't be bumping elbows as they do in that hot stuffy room, and there would just be a feeling of spaciousness there.

Q Would there be any advantages in your view in terms of privacy in such visits?

A You increase the probability of privacy simply by having more room where groups of people can -- also -- or can just be away from each other, further distance, so you get a little bit more privacy. Also, save some money. You wouldn't have to have a staff member on the sally port between those two stuffy rooms.

Q Do you have an opinion as to whether or not such visits could be conducted securely?

A As securely as what you do up in the two visiting rooms.

MR. MUSHLIN: Thank you, Dr. Fogel.

No further questions.

CROSS EXAMINATION

XX BY MR. CORSI:

Q Dr. Fogel, I believe you testified that you were involved in corrections on an operational level for about seven and a half years, is that correct?

A In California seven and a half years and two years in Minnesota.

Q When you were in California were you in charge of any detention facilities?

A That's what it was, juvenile detention and then --

Q That was prior to any adjudication of a person?

A Both.

Q Were you ever in charge of any adjust detention facilities, pretrial facility?

A Not operationally, no. The Commission of Corrections for the State of Minnesota does have standards setting and inspection responsibilities for all the jails. I was involved in with that.

Q So it would be fair to say though that you have not been in charge of the day-to-day operations of an adult pretrial detention facility?

A That's right.

Q When you visited the MCC yesterday, and I believe you spoke with inmates, were you identified to the inmates?

A They -- it worked both ways. Nobody asked me directly what I was doing there, but we were in a party of three or four, so inmates would ask one that they knew in that group.

Q Who is that, Mr. Young?

A Could be Mr. Young or there were -- no, Mr. Young would be the central one, and he would simply explain what, that I was doing to be testifyng and such, so that it became apparent right away.

Q Testifying on behalf of the petitioners?

A Yes.

(Continued on next page.)

to lead to messy human relations. Whatever other problems you have got are simply going to be exacerbated by a close confinement and it is a dangerous living situation, but there are some just management questions there that could be straightened out. The architecture, unfortunately, is not in the service of programming, human programming.

Q Have you reviewed any evidence of fights or suicides or killings at MCC?

A Fights. Just those three incident reports having to do with the riot.

Q That is the only thing?

A That's it.

Q Do you know or are you aware of any detention facility that merits visiting right in the cell block area or the unit itself, again in an urban setting?

A I'm trying to think of one of the units in the Chicago MCC. I'm not sure. I think in one of the units at MCC in Chicago. Of course, this is not a cell block. That was the reason for building it this way.

Q Right in the living unit where the individuals have free access?

A The commons room is -- you don't mean the hallway where the rooms are?

Q That is correct.

A Like you say, it is unique architecture and you won't find that except in a couple of the Federal Mcc's any place so I can't compare it to anything.

If you ask me do people come an visit in urban detention centers in --

Q In the day room?

A Of a cell block, the answer is I am not familiar with it. In prisons, yes.

Q But not in detention centers?

A I am not aware of it. It may go on, but I am not aware of it.

Q Isn't it true that when you referred to maximum security on your direct examination --

A Sheriff Buckley, Suffolk County in Massachusetts, they do there. They have dances, too.

Q Right in the day room?

A Not only the day room, whatever they have got going they turn into visiting areas. It could be the gymnasium and they will have all sorts of social events going on there, too.

Q Not in the living area?

A Not in the cell block, no.

Q In referring to maximum security on your direct are quite right, that the whole unit is maximum custody. Then within it you are already maximum custody. Nobody has to label you anything because that is the condition of your confinement. They don't do individual diagnosis and classification at MCC. At least I am not aware of it. They don't need to because every subunit is already maximum custody.

Q Are you aware of the distinction at MCC between administrative detention and disciplinary segregation?

A Yes.

Q What is your understanding of the distinction?

A The detention would be a jail within a jail. You are there on probable cause awaiting disposition of an internal disciplinary board.

The other would simply be the sentence that you got as a result of that, and it could also be for periods of confinement presumably as a result of the outcome of a hearing for people that simply can't be in the total population.

Q Are there differences in the conditions between one and the other?

A 9 South, that unit I visited in 9 South, MCC. I am usually not lucky enough to have it delivered right in the middle of the proceeding, but fortunately I have such a letter now from a Mr. Clifton Sykes, which I will mark as the next court exhibit and have it delivered to counsel for such action or comment as anybody may deem appropriate, including direction to counsel for petitioners to report to Mr. Sykes the action taken on his letter.

(Court's Exhibit 3 marked.)

HARVEY N. ALTER, called as a witness by the petitioners, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q Mr. Alter, would you please state your current position?

A Chief of Corrections, Standard and Goals, State of New York, Division of Criminal Justice Services.

Q Would you just describe briefly for the Court what your educational background is?

A I have a bachelor's degree in education, master's degree in sociology, master's degree in criminology.

Q Would you describe the status of the National Association of Alternatives to Incarceration just so the judge is fully advised as to what our professional relationship is?

A We are both listed as officers in the National Association on Alternatives to Incarceration. We are currently exploring the possibility of holding a Second National Conference on Alternatives to Incarceration.

Q All right. Mr. Alter, the Metropolitan Correctional Center opened in August of 1975. Since that time have you had occasion to visit that institution?

A Yes, I have.

Q And approximately how many times have you visited it it?

A I have visited the Metropolitan Correctional Center approximately 15 different times.

Q Do you recall when the first such visit took place?

A Yes.

Q When was that?

A That was in early January of 1976.

Q When was your last visit to the Metropolitan

Correctional Center?

A Yesterday.

Q Approximately how many hours did you spend there yesterday?

A I spent about six and a half hours there yesterday.

Q All right. During your various visits -- perhaps it would be easier to ask: are there any areas of the institution that you have not visited during those 15 visits?

A No, I believe I visited all areas of the institution.

Q All right. Did you during those visits speak to inmates?

A Yes.

Q Can you estimate approximately how many inmates you spoke to?

A About 100 inmates.

Q Was this always passing conversations or did you have occasion to interview inmates?

A I had many occasions to sit down with the inmates and question them individually and question them in groups.

Q Have you also had occasion to speak to staff when you visited the Metropolitan Correctional Center?

A Yes.

Q Approximately how many of the staff?

A Agout 12 different staff members representative of each of the categories of staff at MCC.

Q What do you mean by categories?

A Executive; administrative, being the warden and the deputy wardens; treatment staff, being the medical officer, psychiatrist; educational and recreational officers, and then line correctional officers and executive line correctional officers.

Q Mr. Alter, did you also have occasion to survey the inmates in a written survey?

A Yes.

Q Mr. Alter, could you tell me whether there are any generally accepted standards in your field concerning the practice of having male guards supervise female inmates?

A Yes, there are standards.

Q Could you describe whether those standards are being followed at the Metropolitan Correctional Center or have you formed an opinion as to whether those standards --

supervise the custody of female inmates.

A In regard to having male guards supervising women in prisons, both the United Nations and the American Correctional Association, through their standards, felt that at no time should a male officer enter the quarters of a woman unless that male officer was accompanied by a woman officer who worked in the institution.

THE COURT: Can't you just put those standards in?

MR. YOUNG: I was going to. We sort of got out of -- you asked what the standards were.

THE COURT: Yes, I know, but are you planning to put them in?

MR. YOUNG: Yes, your Honor.

THE COURT: Let's not have them paraphrased. Just put them in. Then you can brief them.

Q Mr. Alter, have you formed an opinion as to --

THE COURT: When are you going to put them in evidence, these standards?

MR. YOUNG: You want them written out? I thought you meant -- we are going to use them in our posttrial memorandum certainly.

THE COURT: You ought to place them before me so that the government counsel can look at them too if you are going to rely on them. See that you make copies part of the record.

MR. YOUNG: I think this is more from Mr. Alter's knowledge of the area.

THE COURT: I know that. I have a knowledge of Title 18 too, but when I want to know what something says I go to the book, and these UN and other standards are written out. I don't want them paraphrased any more.

MR. YOUNG: We will collect them the best that we can and turn them over to the court and the respondents.

THE COURT: All right.

Q Mr. Alter, on the basis of your experience in this field have you formed an opinion as to what is an acceptable correctional practice concerning male guards supervising female inmates?

A Yes.

Q What is that opinion?

A That a male guard should not enter the quarters of a woman unless that male guard is accompanied by a female officer.

Q Based on your tours in the Metropolitan Correctional Center and the information you have gathered concerning it, have you formed an opinion as to whether that standard is complied with at the Metropolitan Correctional Center?

A No, it is not. It's violated at the Metropolitan Correctional Center.

Q On what do you base that opinion?

A On many instances while I was touring the women's areas of the Metropolitan Correctional Center I noticed no women guards present and only male guards present. I noticed male guards checking on the quarters of women without a female guard accompanying them, and I noticed male guards walking in and out of residence rooms in that section without a female officer present. There were times I did see a female officer there, but there were also many more times when I did not.

Q. What are the reasons for your opinion concerning the unacceptability of that practice?

A It invades the privacy of a woman resident to have a male officer enter her quarters because she might, for example, be dressing. It encourages the possibility of sexual relationships between staff and between inmates. It degrades the intimate privacy that a woman should have and it encourages an uneasy relationship between male and female when one is in fact a keeper and the other is the kept.

Q Mr. Alter, have you observed the uniforms which inmates wear at the Metropolitan Correctional Center?

THE COURT: Let me ask, Mr. Alter, do you have a similar view in the opposite direction, as to female guard personnel dealing with male prisoners?

THE WITNESS: Yes, I do.

THE COURT: What is your view, the same?

THE WITNESS: I believe the same.

BY MR. YOUNG:

Q Mr. Alter, have you observed the uniforms which inmates wear at the Metropolitan Correctional Center?

A Yes, I have.

Q I want you to assume that the persons confined at the Metropolitan Correctional Center are required to weat the jumpsuits that you have observed except that on occasion they are permitted to wear suits, primarily sweat suits that they have purchased in the commissary at the Metropolitan Correctional

Center. Do you have an opinion as to this practice, as to whether this practice is an acceptable correctional practice?

A Yes, I do.

Q Would you state that opinion to the court?

A As far as it being an acceptable correctional practice, it is not. The trend in corrections for years was to try and get the uniformed personnel, that is, the staff, out of the uniforms. To get the staff to dress more like the inmates to enhance and promulgate communication. The emphasis demonstrated at MCC is to get the staff out of uniforms and put the inmates back into uniforms.

I find the uniforms that they are wearing there to be degrading, to be clownlike. The inmates that I had occasion to speak to expressed the personal embarrassment they felt when they went on their visits to appear in front of their children, their spouses and their families in these bright-colored jumpsuits. They went on to explain to me the problem that they had when they had to take care of their human needs as far as taking off the entire jumpsuit to sit down in a bathroom area.

MR. SCHAFFER: Objection, your Honor.

At this time I think we are getting into hearsay.

THE COURT: Yes, sustained.

Q Are there any other bases for your opinion on this issue?

A The --

Q Let me ask you this: are there any generally recognized standards in your field concerning whether or not the requirement of wearing these uniforms is proper correctional practice.

A Any standard that you would look at would simply emphasize the fact that no clothing should ever be degrading or humiliating for an inmate.

Q You have knowledge of specific standards?

MR. YOUNG: Does your Honor want me to inquire as to the specific organizations that he has relied on for that or would you rather that we just provide it in a memorandum?

THE COURT: Does government counsel have any objection to this? If we are going to have the UN standards and the ACA standards and so on, most of which we have seen anyhow, can we agree that the petitioners may just put them in as exhibits before this hearing closes?

MR. SCHAFFER: Most certainly the docu-

Q Would you describe that opinion for the court?

A I don't rely my thinking entirely on the standards in this area, although the standards undergird my thinking in the fact that an institution shall be kept clean at all times. Basically any place you are going to force people to live in should be kept clean. My experience at MCC, on only one occasion did I find the institution kept clean, and on every other occasion I found all types of refuse lying in the sally ports. I found trays filled with food, long after the mealtime was over, lying around on tables. On my tour yesterday I noticed in three different sally ports at 2:30 in the afternoon, some time after the inmates had concluded eating, bits of food and trays and plastic bags ripped on the side with garbage coming out of them, lying on the floors near the elevator areas.

Q I want you to assume that, for example, mattress covers and clean blankets are not provided to incoming inmates at the Metropolitan Correctional Center. Are there any generally recognized standards in your field concerning the propriety of that practice?

ation talk to those specific issues as far as the issuing of blankets and mattresses.

In touring MCC on a number of times I noticed inmates walking around with blankets over their shoulders to ward off the cold and these blankets were in fact their bed blankets which were dirty. In a number of cases in rooms where I walked in to look at the size of the room or the, some condition inside the room, I noticed blankets that were on the bed that were dirty.

Q Are you referring to rooms that were occupied at the time or rooms that were not?

A Yes, rooms that were occupied.

Q Mr. Alter, I want you to assume that the bus lists listing the people who are to be transferred out of the Metropolitan Correctional Center are regularly not posted until after eight o'clock in the evening and that those lists sometimes are not posted until after the inmates are locked into their rooms at night, and that the names listed on those bus lists are people who are to be moved out the following morning between six and 8 a.m.

I would like to ask you whether you would have an opinion as to whether that constitutes a valid correctional practice?

instead of providing a system that gives access for inmates to go to an area to receive that kind of a service.

It also creates a stagnant environment forcing someone to stay in the same room and surroundings day in and day out, which in turn produces a terrible sense of tension. It forces the mixture of classes of inmates inside the institution, it forces the grouping into small gang-like clusters all around the unit.

There is no opportunity for people to take advantage of seeing different types of staff people and gaining access to different parts of the institution just to change their frame of thinking and allow them to have a fresh environment in which to view themselves, their situation, the institution.

Q By the way, in the course of your answer you said this forced a mixing of the classification of inmates. Would you describe what you mean by thator did you mean?

A At the institution their system of classification is not reflected in their housing patterns. Oftentimes you will find a convicted person mixing with a non-convicted person or, in fact, being assigned a housing unit next to a convicted person, which is a terrible correctional practice. People that have not been convicted of anything being forced to live in an environment of people who are convicted and serving prison terms is totally antipathetical to the purpose of putting them in there when they simply can't make bail or when they're in there for pretrial detention and they haven't been convicted of any crime.

MR. CORSI: Your Honor, I would like to object and move to strike this testimony on the grounds of hearsay.

MR. YOUNG: Your Honor, I think it has been stipulated. I can't understand why it would be hearsay if the Government has agreed to stipulate that mixing occurs.

MR. CORSI: It is Mr. Alter's claimed knowledge on many occasions.

THE COURT: Is it stipulated?

MR. CORSI: On some occasions, yes.

THE COURT: He can know it from the stipulation, as we all do.

Overruled.

Q Mr. Alter, you described the number of other institutions you visited and/or evaluated and/or have been confined In during the course of your experience in this field. Based on that experience what level of custody would you describe confinement at MCC?

THE COURT: I don't know that these labels are of any use whatsoever. I don't care whether he calls it minimal, rosy, technicolor, maximum. It is what it is that counts.

All this bandying of labels is of no use at all to the Court.

Q Mr. Alter, would you describe wherher -- I withdraw that.

Have you observed other institutions which have a similar form of confinement to what is practiced at the Metropolitan Correctional Center?

A Yes, I have.

Q What are the security needs of those institutions?

MR. CORSI: Objection, your Honor. I think the question is vague.

THE COURT: Yes, sustained.

MR. YOUNG: Well, what he has just described in terms of confinement, he has described the confinement system.

THE COURT: I understand it. I am sustaining the objection to your other question as to what other security needs are. I don't know what that means and it is to me vague and impermissible.

Q Mr. Alter, would you describe the confinement situation that you have just described as being necessitated by any security needs of the institution?

A You mean the modular confinement?

Q Yes, is that made necessary on the basis of your experience in this field, is that made necessary by any security needs of the institution?

A No.

Q Would you explain the reasons for that opinion?

A That type of excessive confinement I have not seen practiced in any of the insitutions that I have either been incarcerated in or that I have visited. It is excessive confinement because it restricts movement to such a high degree.

The sophisticated system of a control room that exists at MCC that includes things like motion sensitive cameras and complete control of the elevators, complete control of the doors is extreme security and I have never seen another institution that secure.

Q Mr. Alter, have you formed an opinion as to whether a less secure practice of confinement could be

Q Would you describe for the court what that system is?

A An inmate can leave his rooming area or his immediate day room area and move to other areas of the institution once he or she has gotten a pass from the correctional officer who is ultimately responsible for their whereabouts. That pass would very specifically state: This inmate is going from place A to place B.

The correctional officer who has charge of the inmate records on a sheet where the inmate is in the institution. He could therefore locate the inmate, if it was necessary. The idea is really perimeter security, which produces inner security, but to allow inmates movement within, inside the perimeter security. As long as your perimeter security is of the nature of the type at MCC, you could then move within the institution, taking advantage of the different programs and services through a pass system, versus having those services brought to you.

MR. SCHAFFER: Objection, your Honor. I think we have gotten right back at the end of his answer to what our initial objection was and which your Honor sustained.

opinion is?

A Yes. My opinion is that the mixture of inmates on 9 South is an almost designed situation for tension and negative relations between staff and inmates, inmates and other inmates.

In 9 South they have got people who are under mental observation with people who are in administrative detention, in addition to a few other classes of inmates that they stick in there. All of those inmates have an opportunity to mingle in 9 South so you have got one inmate who is under mental observation, who we can assume might be a potential psychopath, mixing with someone who has been stuck on that floor as punishment for violation of an institional rule.

The fact that they are being put up there for punishment puts them in almost a situation of double jeopardy, since they are being forced to mingle with someone who could at any moment act out some kind of pathological need since the institution has designated them as being under mental observation.

Q By the way, you described a mingle of these groups. Did you observe that on your visits?

A Yes. I observed yesterday, for example, two inmates placed there on administrative detention mingling in the halls with other inmates who were passing freely through the halls. You have got an inmate that is under mental observation, that inmate should be close to physician. You can't have people under mental observation mingling freely with people who are also in there for other reasons.

How could an officer know who is under mental observation and who is in there for other reasons? There is no system of identification, plus the fact, you know, just about every situation where you have got people under mental observation, you have got to have a qualified physician observing them, or at least on call or close to them, on a 24-hour basis. . You don't know what kind of medication they are going to need.

Q Based on your tours of the Metropolitan Correctional Center have you formed an opinion as to where persons under or in need of mental observation or in need of observation because of mental conditions should be housed?

A Yes. They should be segregated and housed in a hospital unit.

THE COURT: Dr. Sosse doesn't think so.

He is in psychiatry too.

MR. YOUNG: Maybe the respondents would like to call him.

THE COURT: I don't think they need to.

Look the use of all-purpose experts, Mr. Young, can be excessive and you ought to confine some of these things. I just cannot give weight to that testimony.

I read the curriculum. The man is not a psychiatrist and to use him for everything in the world is too much.

MR. YOUNG: His concern was security --

THE COURT: I am trying to guide you because I appointed you and I want you to be superb at all times.

MR. YOUNG: I am trying, but you set very high standards. I only have two more standards that I want to go on with with this expert.

THE COURT: All right.

Q Mr. Alter, I want you to assume that inmates are not permitted to observe searches of their rooms. Have you formed an opinion as to whether this is a valid correctional practice?

A Yes, I have.

Q What is your opinion?

A That an inmate should be allowed to observe or be in very close vicinity to his room when his room is being searched. Too often correctional officers will search the room of an inmate and the inmate will state that the correctional officers placed some contraband in there. They produce the contraband or the inmate will claim that he had some article inside of his room which was not contraband which the correctional officers stole or the inmate will claim that the correctional officers came into his room and purposely broke some pieces of furniture.

By having the inmate close to his room the inmate is accountable for what the correctional officers find in there immediately.

Correctional officers can question the inmate on any question they have concerning what the contents of his room are and it doesn't allow for that kind of situation which I described to happen.

Q Have you formed an opinion as to whether having an inmate observe searches of his room would create a security risk?

A Yes.

Q What is your opinion on that?

A It doesn't create a security risk.

Q On what do you base that opinion?

A Let me say it is less of a security risk than not having the inmate present. If the inmate were not there, you are creating an opportunity for all kinds of repercussions. Having the inmate and having two correctional officers go into the room does not produce an infraction of security. It rather contains the search and prevents it from becoming a huge incident.

Inevitably in a prison the inmate will get word sooner or later, not from the correctional officers that his room is being searched, but from other inmates. That inmate then becomes paranoid and figures out some way to get back to the room or immediately begins to suspectwhat could be going on inside during that search, and creates an unnecessary suspicion. It could be a self-contained search.

THE COURT: I am not going to give weight to the diagnosis of paranoia.

Q Were you using that phrase as a layman uses it?

THE COURT: Really, there is too much lay testimony here about things that I am afraid diminish the really useful testimony when you allow this to sprawl all over the lot.

MR. YOUNG: I will just point out that part of Mr. Alter's expertise is based on his own personal experiences.

THE COURT: I realize that. I have been paranoid in my day too, but I am not an expert on it.

Q The final area that I want to question you on, Mr. Alter, is the dormitory at the Metropolitan Correctional Center. I would like you to assume that the dormitory -- each of the six podds in the dormitory unit was designed to house nine inmates, and that they currently have bed space for 20 inmates in each pod, and on occasion house up to 20 inmates in each pod.

Do you have an opinion as to whether that is a valid correctional practice?

A Yes.

Q Would you describe for the court briefly what your opinion is on that?

A That the dormitory is terribly overcrowded. The discussions that I had with the architect, looking at the plant of the original design --

THE COURT: No, no, no. I don't want to hear about the discussions, Mr. Alter. I have your opinion. Go ahead.

Q Mr. Alter, is there a standard of 75 square feet that is frequently referred to in connection with dormitory space per inmate?

A Yes.

Q What is your understanding of that standard?

A That each inmate should have 75 square feet available to him inside that dormitory unit.

Q You mean inside the modular unit or inside the pod?

A Inside the pod where his bed is. He should have 75 square feet around him.

Q Are you aware of whether your colleagues agree with that interpretation of space?

MR. CORSI: Objection. Whatever standard he is referring to speaks for itself.

THE COURT: Sustained.

Q Are you referring to your personal opinion as to the squate footage per inmate?

A Yes.

Q Mr. Alter, how many people do you believe, in your opinion, could be housed in the dormitory unit?

MR. SCHAFFER: Objection.

MR. YOUNG: On what basis?

MR. SCHAFFER: He gave his opinion that it was overcrowded. This goes to the remedy.

MR. YOUNG: On cross examination, that every other expert witness that has testified, the government has asked for numbers: Could you house 15? Could you house 11?

THE COURT: I will allow it.

Q Have you formed an opinion as to how many people could be housed in that unit?

A Yes, I have.

Q Referring to each pod now, how many people do you believe could be housed in each pod?

A A maximum of nine people per dormitory unit.

Q What do you base that opinion on?

A On the amount of availability of bathroom facilities, on the amount of lights that exist inside the dormitory, on the situation of the windows inside the dormitory, on the amount of space available to each inmate, on the kind of living arrangement that would eliminate the terribly smell I experienced when I went into the dormitory units, on the kind of arrangement that would elminate the clothing being thrown all over the place because there is no place to hang it.

I would base it on that. There are only

six lights in those dormitory units for 20 people. You have got double bunks and one light on top of the bunk in six areas. That means that only six people have actual light on top of them inside the dormitory unit.

The other lights, which are located on the ceiling and are part of the overall lighting, have to be turned on by hand.

Yesterday I saw an inmate turning on and turning off the lights by using his hand. That is the only way you can control the lighting inside there.

When you have that many people in that small of an area that is the kind of situation that produced.

One toilet for 20 people, one sink for 20 people, and one shower for 20 people creates havoc in there when more than one person has a human need at the same time.

MR. YOUNG: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. SCHAFFER:

Q Good morning, Mr. Alter.

A Good morning, Mr. Schaffer.

Q Mr. Alter, in your previous experience in the field of corrections, on what occasions have you served in an operational capacity within a correctional facility?

A I served in an operational capacity as the head of an inmate council advising a superintendent for about four years at Norfolk Prison.

Q Was that as an inmate?

A As an inmate.

I served as a senior planner in the Massachusetts Department of Corrections.

I served as an adviser to the superintendents of the Massachusetts correctional system, as an official in the State Department of Corrections, some years after I was released from incarceration in that state.

In my current situation I am, of course, advising and dealing with the operation of the entire New York State, New York City, all of the county jails, as far as their operations are concerned.

Q Perhaps my choice of words was unfortunate.

In all of those positions that you described, except with respect to the inmate counsel, your responsibilities were basically advisory and planning responsibilities, is that correct?

A Yes.

Q Have you ever worked inside a prison?

A Yes.

Q In what capacity?

A As a state official in the Commonwealth of Massachusetts I had to of course go into the prisons.

Q Have you ever worked as a correction officer?

A No, I have not.

Q Your only actual job which kept you inside the prisons on a full-time basis was a teacher when you were an inmate, is that correct?

A Yes.

And -- I'm sorry -- in addition to that, of course, in this position I have to go inside all of the correctional institutions in the State of New York and in the City.

Q Mr. Alter, is it your belief that incarceration is iherently harmful to individuals?

A Yes.

Q Is it your belief that all forms of incarceration should ultimately be done away with?

A No.

Q Under what circumstances would you believe incarceration to be --

THE COURT: I don't think that kind of

THE COURT: Listen, can't that be handled -- since everybody is in agreement on the law, and there may be some kind of finicky disagreements about the fact -- can't that kind of thing be handled by a reaffirmation of what you concede to be the legal duties of your people and an agreement to give notice to all concerned of that reaffirmation?

Let me put that in more basic English. Why can't we have a small consent decree on that kind of issue which recites that the Court isn't deciding there has been violation of this rule on any large scale? There is some evidence there may have been some and we are issuing this injunction because everybody agrees it is a proper rule to impose on the prison and is a reminder to everybody. You can word that in better English, but why can't we do that?

MR. SCHAFFER: There are two objections to that. One perhaps on principle and one practical.

Where we concede it is our rule to do something, unless it is shown we are departing on a regular basis from that rule, we do not feel that our clients should be under a court order to enforce their own rules.

THE COURT: Then I will enjoin you.

If that is your position I will enjoin you. Two violations of the sanctity of the mail by people who are of age and literate and can see it says attorneys and counselors at law on the envelope, in the face of a conceded policy and rule against it, may well be enough for the Court to enjoin without your consent.

I am just trying to make life a little more agreeable for you, and maybe if you come in here and bring me ten truckloads of lawyers' mail that you didn't open, I will still enjoin you. I don't know why you have to test the limits of everything.

Your government has, on occasion around the country, entered into consent judgments without admitting it has been doing wrong and I don't know why you respond with this kind of stiff-necked view about making a consent arrangement when you are not going to be able to refute the cases where there has been departure; and all I am suggesting is you agree to tell everybody, "Let's watch out and be sure we obey this from now on."

MR. SCHAFFER: Your Honor, I will take that to my client and discuss it with your Honor.

THE COURT: If your client is in charge you know the answer. Your client is not much on agreeing still in the case and I have directed the Government to give us evidence on the situation in that respect.

MR. SCHAFFER: Yes, your Honor, that's perfectly understood.

THE COURT: All right.

MR. SCHAFFER: Your Honor, next issue is noise. We believe that Dr. Danto's testimony was of such an equivocal nature as to have failed to establish a prima facie case.

Dr. Danto testified that the only federally promulgated standards of which he was aware were the standard of the Occupational Safety & Health Administration which permits noise levels up to 9 DBA's for an eight-hour day and of course none of his readings approached that figure.

He also testified that most of his opinions concerning the possible danger of the noise level at the MCC were based upon the EPA standards for hearing loss which set 70 dba's over a 24-hour day for 40 years as the threshold level, and Dr. Danto admitted that he did not take any sustained readings there over any length of time; that you could not estimate what the average 24-hour dba reading would be.

He testified that therefore he would have to

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be uncertain --

THE COURT: I remember the testimony.

MR. SCHAFFER: Your Honor has also noticed the noise --

THE COURT: Let me just say that I think the burden of persuasion shifted about that time to Mr. YOung. I'm strongly inclined to think you're right about the noise, but I'll hear Mr. Young.

What paragraph does that come under anyhow?

MR. YOUNG: It's 15-A. It's an amendment which was consented to by the respondents. If your Honor doesn't have a copy of the amendment.

THE COURT: No, I don't have a copy here handy.

MR. YOUNG: It states briefly that noise levels, by the way, not only in the commons area but visitors' rooms, modular units and commons areas of MCC are so high as to have an adverse effect on hearing and create the danger of audiological damage to relators and staffs to interfere with normal communications, to create tension and to endanger relators physical well being.

THE COURT: Strike out from this discussion the visitors' rooms because that's a separate subject, and you've got enough evidence to make a prima facie case

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that will concern the Court about all the visiting conditions, including the noise and the crowding and the hours and the locked bathroom, the whole bit. So nothing we do about Mr. Schaffer's or the Government's present conentention should be understood to dimiish the case that petitioners are entitled to press about visitors, but as to the noise level which the inmates are subjected elsewhere I believe that has been quite clear and an entire failure of proof.

MR. YOUNG: Your Honor, I would point out that every witness that we put on the stand until your Honor directed us to start eliminating repetition testified that their modular units were extremely noisy at times and that it adverse effects on them. I would moreover point out that --

THE COURT: I assume that if you put every person in the MCC on he or she would so testify. It's extremely noisy at times. If you put on people who are confined where I live you would get similar testimony starting with me. But when you try to measure with a little bit of objectivity as your audiologist did the level of noise the figures turn out to be utterly insufficient to make out a case of this kind especially when that is coupled with t he fact that for better or worse over the months before and during this case I've spent a number of hours in that facility, and it has to be, and it is my judgment that the noise levels are not too loud within tolerable limits. This is nothing like places where it says if you were subjected to the noise of subway trains.

We were in the most crowded unit I guess the day before yesterday at lunchtime and the level of noise I will state for the record was entirely tolerable. In fact lower than I would have expected at such a time and such a place with such a group of men, leaving aside the clanking of dishes which happens in any dining place. The conversation was entirely possible throughout, even though in addition to the eating there was talking and pool playing and a lot of miscellaneous activity.

I was also made aware, and it's correct that if you go into the dormitory units adjourning that commons area almost all the noise is blocked out. I won't say that it's the kind of place that Plato would have liked to have walked and think, but I think the noise levels don't remotely approach a degree of intolerability that would violate any statutory or constitutional standard that I can be expected to find applicable to this case.

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MR. YOUNG: Your Honor, I would point out since you appear to be basing a certain portion of your opinion on your tour --

THE COURT: Tours, plural.

MR. YOUNG: All right. On your tours that you still do have one further tour and that in addition I would point out that Mr. Fogel testified that when he went over yesterday to the same unit you are referring to that number one it was very noisy and that number two that certain other conditions which your Honor took note of that were desirable in the unit were not in existence yesterday creating at least the impression that certain conditions in that institution at the time that you visited them were not conditions that normally exist there.

I would urge your Honor to reserve your judgment on noise levels in the dorm until you have completed your final tour. Additionally I would point out --

(Continued on next page.)

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THE COURT: You claim that the place gets very noisy at night?

MR. YOUNG: Yes, because then everybody is in the unit for one thing.

THE COURT: I am dismissing it now based on what the audiologist said primarily, because taking your own evidence, I don't think you make a prima facie case. I think that is buttressed by what I have observed and heard or failed to hear but if I am assailed by intolerable screeches and other noisy sounds, when we make a night visit, I will reconsider, but unless I am moved to reconsider it, in that unlikely event, the decision is, the aspects of the noise question that we have talked about are dismissed at this point for want of proof.

MR. SCHAFFER: Your Honor, the next issue relates to sanitation. It is alleged in the amended petition --

THE COURT: Somebody better give me at some point a copy of any additional amendments to this petition.

MR. YOUNG: They were filed with the Court.

MR. SCHAFFER: Paragraph 118 alleges that the MCC is infested with mice and other vermin.

There has been some testimony that on occasion, Q Directing your attention to the period of time when you were case manager for the 5th floor unit could you describe to the Court what your responsibilities were as case manager?

A Prior to my assignment?

Q No, during the time that you were assigned to the floor.

A Okay.

Q What were your duties as a case manager?

A My duties on the 5th floor primarily involved parole matters. At the time I was assigned the 5th floor unit it housed those individuals who were designated as serving their time at the MCC and as such were eligible for parole consideration and other matters.

As an example, furloughs and preparation of legal documents. I also performed approximately seven study cases for the Courts, youth evaluations and adult study cases.

I also processed the legal mail for the inmates on the floor and performed whatever duties were necessary for the floor and the maintenance of the unit.

Q Did your responsibilities include job assignments?

Q As case manager did you also have occasion to relieve the floor officer?

A Yes, I did.

Q How often would that occur?

A That would occur possibly about once a day when I relieved him for lunch, and for about half an hour to 45 minutes.

Q In that connection did you take on responsibilities with respect to supervising food distribution and kitchen clean-up?

A Generally, no. On occasion I would, I would relieve him before the lunch had completed for the inmates, but more often than not to give the -- to give the routine of the floor more smoothness I would let the officer select what hour he would like me to to relieve him, and that would generally occur after the meal had been served, the noon meal.

Q As a case manager on the fifth floor what were your hours of work?

A I worked generally from 8 o'clock to 4:30 p.m.

Q And could you briefly describe what the typical day would be?

A Okay. I would arrive to the institution --

arrive at the institution about 5 to 8, get my keys, go up to the unit, and check some notes or whatever that I left the previous day. Approximately 8:15 I would check the legal mail, gather up whatever mail that was to be sorted and whatever for legal correspondence and send out to the mail room. I make distribution on that.

I would have open hours at my office from -- generally, from about 8:30 till 10, and I may on occasion make in the morning -- may on occasion make room inspections, sanitation inspection; some mornings would be devoted totally to sanitation of the unit.

By and large I would have open house from 8:30 till about 10, from 10 to 11 I would generally walk on both sides of the unit to see what was going and talk to whatever inmates wanted to see me or have some personal problem.

And from about 10:30 to 11 o'clock I would generally get back into my office and see those inmates that wanted to see me that didn't want to speak on the floor.

Q Could you explain where your office is located?

A My office is located on the fifth floor, south side. That's the female -- female unit.

I'd spend that time in my office from approximately 10:30, 11 o'clock till the time when I would relieve the floor officer for lunch in my office, and that would generally occur around 12:30, maybe a quarter to 1. I would relieve the officer.

He'd return to the floor approximately 1:30, or maybe before, and I would go to lunch myself about a half hour to 45 minutes.

Some mornings I would also have to go down to the commissary to pick up supplies for some of the inmates that missed commissary, or possibly retrieve clothing articles or jewelry, whatever had been left on the -- in the lobby for the inmates.

On Tuesday I would have a general staff meeting with the other case managers on the third floor unit, and the afternoons are generally taken up with some parole matters, possibly dictation on case studies; just general office hours.

Those times that I was in my office I had open hours for both sides, up until about a month and a half ago, when the interconnecting doors of the male-female units were secured. Then I would have to make more trips to the north side to see those inmates.

Q Now, in connection with your duties, Mr. Swanson, you mentioned legal mail. Would you describe what your duties were with respect to outgoing mail from inmates to attorneys or the courts?

A Okay. Case managers are assigned the specific duty of picking up the legal correspond that's been deposited in the prisoners' mail box, generally known as the PMB box. We are the ones who have a key to that box, the only ones who have a key to it, to my knowledge, with the exception of a security officer.

I would routinely pick up the mail at 8:15 in the morning. Sometimes there was no mail in the box, but on those instances where there was legal mail I would take the mail out, generally at 8:15, stamp it, take it down to the mail room, he would see that it was mailed out.

Q Now, can you recall any specific occasions on which you did not take out the legal mail at 8:15 in the morning?

A There's been a couple of instances, but I would like to say this too for the record: that we were assigned, as a case manager I was assigned to retrieve the mail. I was also informed to establish a routine, a routine time when the mail was to be picked up. And so I established that at 8:15 in the morning.

However, throughout the day I would check the box two or three other times. If there was mail in there, I would also retrieve that and take it down.

There was one instance when we did not have sufficient staff coverage to take a young lady out to the Bellevue Hospital for an escorted trip for medical reasons, so I was assigned that duty early in the morning.

I missed picking up the mail that morning. However, when I returned to the institution that afternoon, I did retrieve the mail, and any legal mail that was for that day was taken out that evening.

Q Can you recall approximately when that occurred?

A That occurred, I think, around 3 o'clock in the afternoon.

Q No. I mean the date. The date? I am not really certain of the date, but it was about a month and a half ago.

Q And subsequent to taking out the legal mail on see that legal mail that came into the institution was actually given to the inmates, to the addressee.

Q And could you describe what the procedure for that was?

A Generally in the morning, when I would come in, the mail room would be open, I would pick the mail up before I went to the unit, and when I got to the unit I would call out the names of the inmates. I would either go to the room, call out the name on the balcony, or the inmate would come to my office or come to me and I would open it in front of them and give them the letter.

Q Did you also distribute personal mail or only legal mail?

A Only legal mail.

Q And by whom was the selection made as to what constituted legal mail and what constituted personal mail?

A The mail room officer has been briefed as to what is legal mail and what is not legal mail. Generally, though, if there is any question if it is legal mail or not, he would give it to me anyway and I would see that that mail also was given to the inmate.

Q When you give the mail to the inmate, is inmate.

Q Mr. Swanson, as case manager, did you ever have responsibilities with respect to providing inmates with supplies?

A On occasion we would. Either the floor officer or one of the inmates would advise us that they were out of whatever supplies, and we would then type up, or I would have the unit clerk type up, a request for supplies, and we could generally get supplies to the unit that same day.

Q Was there also a supply closet on the unit?

A There was a supply closet on each side of the unit. On rare occasions there would be things that we could not get because the warehouse was out of them, such things possibly as some sanitation supplies. But by and large the needs for the individual inmates, we could receive those the same day.

Q Could you describe briefly what kinds of supplied were kept un the supply closet?

A Well, in the female side there would panties, bras, sanitary napkins, toilet paper, tooth brushes, toothpaste, soap powder for laundry, body soap for showering. There would be paper for correspondence, pencils, trash bags, possibly some dirty linen to be picked up that day.

In addition, on the south side there was towels, sheets, pillowcases.

On the north side there would be towels, sheets, pillowcases, possibly some extra jumpsuits, some underwear, possibly some socks, toothpaste, toothbrushes, the whole sort of things that a person would need to see to routine physical help.

Q And on those occasions when the supply closet did not contain an item, what was your procedure?

A Our procedure was to try to get the supplies up that day, okay? And our procedure would be to type up a request form, take it down to the warehouse clerk, who would then fill the order, and it would be delivered to the floor that day.

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Q As a case manager, Mr. Swanson, do you also have some responsibilities with respect to the BP-9 forms?

A Yes, I do.

Q What are those responsibilities?

A Those responsibilities are, one, to see that the BP-9's are handed out.

An inmate would first come to me and request that they receive an administrative remedy form, a BP-9, and I would then ask them why, you know, why he would need one, and if there is some way we could solve the situation unofficially or not go through the procedure of an official BP-9. If we couldn't, I would give him the BP-9. If I didn't have one in my office, I would see that they got one soon, shortly thereafter.

The inmate would fill the form out, whatever grievance he had, he would bring it to me, and I would receipt the BP-9, just a little attachment on the bottom where you fill in, make a general statement as to the individual's complaint, put their name, their number, the date, and I would sign my signature that I had received the BP-9.

Then I would hand deliver the BP-9 to the Warden's office.

Q Can you recall any occasion on which you refused to give an inmate a BP-9 form?

A No.

Q Can you recall any occasion on which you refused to accept a completed BP-9 form?

A No, there wasn't.

Q Can you recall any occasion on which Miss Braunig requested a BP-9 form of you?

A No, I cannot.

Q During the time that you were case manager on Unit 5, Mr. Swanson, were you ever made aware of any complaints by female inmates concerning the presence of male officers on their floor?

A Just general complaints that there were male staff on the floor?

Q Yes.

A I never received a general complaint just for the mere fact that there were males on that side of the unit. I did receive a complaint where -- I received actually a BP-9 from an inmate who stated she objected to male staff members entering her room.

Q And who was that inmate?

A That was Miss Braunig.

Q When did you receive that BP-9?

Q Based on your observations of Miss Braunig could you estimate approximately how many hours a day the kitchen and sanitation aspects of her job amount to?

MR. YOUNG: I'm going to object to that unless this gentleman has observed all of her activities in that regard.

Q Well have you observed her during the course of a meal?

A Yes, I have.

Q During the course of the meals on which you have observed her how long does surrounding that meal does the kitchen and sanitation duties take to perform?

A Normally three to four hours a day.

MR. YOUNG: I object to that answer, your Honor, unless he's observed all meals from beginning to completion.

Q Just as to one specific meal about how long would it take based on your observation?

A For one meal?

Q For one meal?

A 30 minutes to 40, 45 minutes.

Q Would it depend, the length of time depend on which meal you were observing?

A It would depend on the type of meal and also the length of time it would take the inmates to get up there to be served.

Q Have you observed occasions when Miss Braunig was asked to perform sanitation duties during times other than meals?

A Yes.

Q Has she always performed such duties?

A No, she has not.

Q Have you personally observed occasions on which she refused to do so?

A Yes, I did.

Q How many such occasions?

A One specifically where I was involved. We were having, we were gearing up for an inspection and I, she was in her room. I called her out and asked her if she would mind assisting us to do some routine sanitation on the unit. As an example, vacuuming or whatever.

She refused stating that she only works five days a week and, and that she wasn't going to do anything on her day off. And I again asked. I said, "Listen, we need your help. We'd appreciate your help." And she, she again refused.

Q Based upon your observation of the individuals in the women's u[illegible]. who are assigned to kitchen sanitation duties, apart from the meal hours, approximately how much time per day is spent in sanitation duties?

A One to two hours a day generally. Might say this, there is, there is more inmates involved in sanitation of the unit than just those specifically assigned. We receive volunteers frequently.

There are some girls that are unassigned and they just would like to keep busy and work so they would assist us on the unit as well. But generally those people who are assigned to the unit they would in addition to the kitchen responsibilities generally one to two hours a day.

Q You mentioned in connection with your conversation with Miss Braunig that she stated it was her day off. Based on your personal experience how are days off arranged with respect to inmates?

A Okay. Days off are arranged actually by the people that are assigned to the detail, the specific detail. If there is enough inmates assigned to any given detail and they feel like they would like to work something out where they, where they, they can take a day off or so, no problem. They can do that.

But many, many instances there are not enough tions?

A I taught a course at Long Beach, California State University at Long Beach, a senior seminar in field placement program for students in criminal justice, and I'm currently teaching a graduate level course at Long Island University on correctional administration.

Q Have you testified in any court regarding correctional practices and the operation of correctional facility?

A Yes, in September of '75 I testified before the Queens House of Detention case in front of Judge Dooling in the Eastern District of New York.

Q By whom were you called in that case?

A I was called by the Legal Aid Society as a witness.

Q What were the topics of your testimony at that time?

A We discussed and I commented on several facets and phases of the operation of the Metropolitan Correctional Center, including contact visits, quarters, staffing, staff training, and a number of other items.

Q At the time the MCC opened, Mr. Taylor, how many beds were in each of the dormitory rooms within the dorm unit?

A There were six dormitories at the MCC and there were 10 beds in each dormitory.

Q Did there come a time when that situation changed?

A Yes. Shortly after we opened the population increased and as a result we doubled the number of beds in those dormitories. It went from 10 to 20 in each unit.

Q Did you undertake further changes in addition to those that you just described to accommodate the increasing population?

A Yes. Over a period of weeks and a few months. We also doubled up some of the indivvidual rooms on the ninth floor and on the seventh floor, the third floor and the second floor.

Q Did there come a time that you used the magistrate's office as a place to house inmates?

A The room that was originally designated as the magistrate's office is now being used as a staff lounge. At one period of time in our history also it was used as a temporary dormitory. It housed about 30 people.

Q Approximately when was that?

A October to February of '75 to '76.

Q And what was the policy with respect to assigning inmates to the magistrate's room?

A Well, inmates were assigned to that room who were in holdover status, who were traveling via bus, coming through our center, overnighters, weekenders, and towards the end of the utilization of that room as a dormitory we had some pretrial detainees and some sentenced prisoners in there from time to time.

And it was when we got to that stage that we terminated the use of that room as a dormitory.

Q Why did you terminate it?

A Well, because it became apparent to me that we would continue to place pretrial people there and sentenced people there as long as a room was available because of overflow situations, and I thought that the inmates in those categories would better off if they were housed in the living units on the regular floor.

So we terminated it and then began using cots and bunks in the balcony areas instead.

Q Have you been able to accommodate the whole population in the dorms and in the residential units, in the rooms of the residential units?

A No. From time to time, ever since we opened, or certainly past September of '75, I think that was the last time that the count was under 400, we found it necessary to provide additional spaces for an influx of population that couldn't be accounted for.

We have often had to place people in the balconies and other areas, double rooms of the institution, and so forth.

Q Does the MCC have a policy with respect to assigning an individual to a cot or a bed in the balcony area?

A Yes. We tried to make sure that persons who are assigned to those kind of a living arrangements are there for the shortest possible time. Therefore, it is for new people coming in and only when there are no other beds available in the institution.

Q What, if any, steps have been taken by the MCC to reduce the population at MCC?

A Well, we have examined several possibilities and alternatives to reduce the population ever since we first began to note that it was rising above our capacity.

One of the things that we did, Lewisburg Penitentiary in Pennsylvania used to run a bus service through the MCC and it used to come in about three or four times a month. We converted that bus so it no longer held those prisoners as holdovers at our institution and had them run directly instead to places like Petersburg, Danbury and other facilities. They now come in once a month.

In addition to that, in May or April of '76 we acquired -- petitioned the Central Office for a bus and acquired our own bus so that we can move as expeditiously as possible people out of the center. That bus was an older bus, it had 22 seats, and around December of '76 we received another bus that has 27 seats, giving us even more capacity to move people.

In addition to that, we increased our space at the Community Treatment Center from about 145 to 160. We hqve contracted with other private halfway houses in the area to give us additional bed space in community programs. We made arrangements, working through the judges in the Southern and Eastern Districts of New York, and were able to transfer weekenders, people serving their sentence on weekends, to halfway houses, with the exception of about two cases.

We also reorganized our administrative systems section of the institution, which deals with receiving and discharge, bus transportation and so forth, for greater efficiency and determining when a judgment of commitment is received.

I recruited and hired a man who was a U. S. marshal for Baltimore to work in the marshal's service in trying to expedite the handling judgment and commitment papers from the courts, and so forth, so that we can move people just as rapidly as possible.

All these things have been done in an

effort to try to keep population within a reasonable limit.

Q With respect to the MCC bus, how often does that bus make runs from the MCC?

A We have regular runs about three times a week, depending on which week we are operating in. But we also have blanket permission from the Central Office to run whenever necessary. So we have often run more than three times a week. We sometimes run as much as five times a week.

Q Mr. Taylor, what is the cadre at the MCC?

A The cadre is a term that refers to, or did refer to, a group of sentenced prisoners who were retained and designated to serve their time at the Metropolitan Correctional Center as part of our work force.

Q What is the present size of the cadre?

A We have currently 21 corps cadre members and, depending on how many sentenced prisoners we have in the female unit, they may vary another 10 or 15 or 20 there.

Prior, however, in the beginning, we had 103 people as cadre workers. We have reduced the cadre as a result of the January court order to reduce our opulation or cases the double bunking in individual rooms.

Q What jobs do the members of the cadre hold?

A They hold generally jobs outside the units, those jobs to help us run the facility. They include assignment to the food service department, mechanical services, business office as accountants and clerks, and the hospital, the education, receiving and discharge, clothing issue, sanitation. There are one or two others.

Q What is the criterion for assigning an individual to the cadre?

A Se select those inmates who, No. 1, want to stay in New York and have legitimate reasons for wanting to stay in New York.

No. 2, we look for people who are serving relatively short sentences, of a year and under. The average sentence has been around four to six months.

We also look for persons who are good in medical health, good mental health, who do not have serious prior records of violence or sexual deviation.

We also look for people who do not pose a serious custody risk to the community.

Q The skills that an individual would have, is that part of the criterion?

A More so now than it was before, and I say that because there are key jobs in the institution that we just cannot function properly without having inmate help on, and that is lead jobs, mechanical service, such as electrician helpers, electronic technician helpers, carpenters, and so forth, welders.

In the food service department, cooks and bakers. And in the clerical section typists and bookkeepers and so forth.

Q Are all members of the cadre given a red stripe?

A No. They may ultimately end up with a red stripe. Some have medium custody. Red stripe means minimum custody, freedom to move throughout the institution without escort. There is a minimum custody status.

The cadre workers may also have medium custody. On some few occasions they might have close custody, but that is an exception.

Q What are the factors that are considered in giving an individual a red stripe?

A We look at his prior record. We look at how long he has been at his institution, his adjustment there. We have to have enough information to make a rational decision about his security and supervision requirements.

Any information we can get to make that decision is used, including presentence reports, court documents, the FBI rap sheet, prior record, as I said, and [illegible] institutional adjustment.

Q [illegible] you say "institutional adjustment," do you mean at MCC?

A Yes.

Q What is the MCC policy with respect to giving a pretrial detainee or an individual housed on the writ unit a red stripe?

A Generally speaking, a person who is in pretrial status would not get a red stripe. And the reason for that is if the courts felt that the person could be released and have access to the streets and so forth he would probably be in the streets. And the reason we have him in custody for many reasons is so that we can assure that they will show up for court appearances.

Given that, a person in that category with a red stripe would cause some problems because he would have access then to minimum security areas of the institution.

In addition to that, we very seldom have any information about a pretrial detainee. All we know is what he has geen arrested for and when he is going to court. We don't have presentence reports and material of that nature until after the person has been convicted and prior to sentencing.

Q And with respect to the individuals on the writ units, what --

A A person on a writ status presents similar kinds of problems in that they come from another institution, state and federal. Normally their file does not accompany them when they are transferred to the Metropolitan Correctional Center.

We have very little information about what their institutional adjustment has been, although there are ways in which you can obtain that information.

We have many times very little information about the kinds of pending litigation they are either testifying in or being prosecuted for.

We believe from past experience that that kind of ongoing litigation often influences behavior of an individual while they are in custody, that the pressures and situations they face during pending litigation may be a factor in determining how much supervision they require in the institution.

Q What, if any, are the security problems associated with housing pretrial detainees?

A Well, there are some security problems in housing pretrial detainees. For the most part they relate to the fact that we have just very little, if any, information about them. In fact, we try to separate those persons from persons who are serving a sentence.

That is the largest number of offenders at the Metropolitan Correctional Center. And because they are a mixed group, they represent almost every kind of offense category and all kinds of backgrounds, we have to take some very careful precautions to assure that we maintain proper security for that group of offenders.

Q What is the present average bail for pretrial detainees being held at MCC?

A Depending on how you figure it, Mr. Corsi. If you figure it with the high-bail cases included, some of the hihackers and some of the more notorious kinds of cases that we now have housed at MCC, the average bail is around $102,000.

If you take those bails out and then figure on a more normal routine kind of bail, the average bail is around $60,000.

Q It is stipulatee that there is no movement of inmates in MCC except under escort. What is the rationale underlying that rule at the MCC?

A The major factor that influences our decision to escort inmates off the unit has, again, to do with security. The institution was designed in such a way that the units themselves are fairly secure, and where they were not secure we have made alterations to make them secure.

There are several areas outside those units that would have very vulnerable if inmates had access to them. I am talking about office areas, blind spots, windows that are not alarm windows, walls that are thin some cases, and I think the court is well aware of some of the problems we have had with the walls at the MCC, as well as other people in this room, and the fact that we rely primarily on elevators for transportation up and down.

There are two elevators for that kind of transportation. There is a demand on those elevators as there is and a waiting time. Allowing inmates to move up and down without escort would place further demands on those elevators.

Secondly, it provides an opportunity for an inmate to be alone with other inmates, which may create some assault problems with staff and with visitors. And we have several visitors who come to the institutional daily, volunteers, probation officers, marshals, and tour groups and so forth.

And, again, we would have a difficult time supervising or assuring the safety of those people if inmates were not supervised while off the unit.

Q Are there problems associated with separation of cases with respect to this escort?

A That is a second factor. The first thing I have discussed has to do primarily with security. But the second factor -- and I might mention on the security factor as well, or in the separation problem, that we have a special unit at the MCC for offenders who are testifying for the government. They use that elevator as well to go to and from court. And we need to assure that certain categories of inmates are separated at all times, for a couple of reasons.

One, because the courts have requested, or the U. S. attorneys or the defense attorneys have requested, that co-defendants be separated ror one reason or another.

And in other cases it is necessary to separate people for their protection, because they are testifying at opposite ends of litigation, pending litigation.

There is no real sure way of assuring that that separationwould continue if we were to allow inmates from the floors to ride thc elevators and to have access to other areas of the institution without some very complex and very careful schedule.

Q It is further stipulated that except on specual occasions inmates are not permitted to visit other residential units within the institution.

What is the rationale behind this rule?

A The rationale there primarily has to do with our need to separate certain categroies of offenders. And we purposely do not mix floors. Recreation is handled separately, the food service is handled separately. Everything about the institution is designed to separate floors so that they can be run as independent units.

The separation is based primarily on, again, requests that we receive from various members of the criminal justice system indicating that certain offenders ought to be separated.

The only way you can do it in a jail setting is to put each on a different floor.

Q Have you considered using a pass system for inmate movement at MCC?

A Yes, I have. We have talked a pass system of some kind or ways of increasing the flow of transportation through and around the MCC ever since we opened. There are benefits to the staff as well for having that, being able to increas the flexibility of movement within the institution. But we don't think a pass system would work in New York, for a couple of reasons.

First of all, a pass system is only as reliable as the peopel who are running the pass system and mistakes can be made and are made.

In addition, a pass system still requires an inmate to go from one area to another area unsupervised. So what if he doesn't show up at the area where he is supposed to show up? Where do you begin looking for him? Where can he hide?

At the MCC there are all kinds of false ceilings, ventilators that are exposed, blind areas, and places where an inmate could hdie that would take us a week to find. And all he really needs when he gets in an area that is crucial is 25 to 30 minutes to effect his escape.

And keep in mind that our institution doesn't operate like those that have 40 acres surrounding it and two fences and barbed wire and gun towers and so forth. On the other hand, we have the same kind of serious offenders at that institution that require that kind of supervision.

Q Mr. Taylor, would youbriefly describe the security system that you have at MCC?

A Well, we have a great many kinds of technical security devices that operate at the MCC. We have motion sensitive cameras, we have windows and doors that alarm, we have body alarm systems for the staff, we have two-way radio communication systems, we have intercom systems that monitor certain areas of the building for sound, and so forth.

However, most of these systems only work for monitoring areas where there is supposed to be no traffic, and I'll explain that.

I think it is a fallacy to think that you can replace a guard, a supervisor with a camera and expect it to be just as effective. What I mean when I say is that if a camera is monitoring an area where a hundred people pass an hour, or 50 or 10 people pass an hour, it continually then alarms and people become conditioned to those alarms and after a while begin to miss traffic in that area.

And even if you are well trained and you have your eyes glued on that TV set constantly, if you have enough traffic you are not going to be able to recognize all the people who pass, you are not going to be able to